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# LIFE OF HENRY WINTER DAVIS

BY  
BERNARD C. STEINER



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## P R E F A C E

Two Border State Union men did much to save Maryland to the Nation in 1861, and their characteristics were so diverse that they tempt one to write parallel lives of them, as Plutarch did of ancient statesmen. The life of one, the great lawyer, Reverdy Johnson, for some time occupied my thought. Having completed a study of Johnson's career, I took up the life of the great orator, Henry Winter Davis, and have endeavored to write his "life, in the manner of Tacitus and Plutarch, rather than in that of the modern biographer, who tells us what we ought to know from the histories" (Saturday Review, December 13, 1913, page 750). In this study I have been much assisted by an autobiographic sketch of Mr. Davis's early years, written by him shortly before his death and placed in my hands by Miss Mary Winter Davis, his only living daughter. This sketch forms the first three chapters of the book. Much assistance has also been obtained from the volume published by Harper and Brothers in 1867 at the instance of Mrs. Davis, entitled "Speeches and Addresses Delivered in the Congress of the United States and on Several Public Occasions by Henry Winter Davis." The editorial in-

roductions to the speeches therein printed are valuable. Unfortunately, I am unable positively to name the editor. The publishers have no information as to this matter. Mr. Joseph M. Cushing, an intimate political friend of Mr. Davis, once told me that the editor was George B. Milligan, Esq., while Capt. Henry P. Goddard was informed that the editor was Henry Stockbridge, Esq.; yet the families of neither of these gentlemen can throw any light upon the matter. I am much obliged to Messrs. John T. Graham and W. Hall Harris for information. The collections of the Maryland Historical Society also has been useful in preparing this book. It is a privilege to bring again to the attention of men one who was a fearless combatant for what he believed to be the right, an eloquent speaker, a ready debater and an honorable man, to whom more than to any other one man is it due that Maryland freed her slaves in 1864.

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"I saw him beat the surges under him,  
And ride upon their backs. He trod the water,  
Whose enmity he flung aside, and breasted  
The surge most swoln that met him. His bold head  
'Bove the contentious waves he kept, and oared  
Himself with his good arms in lusty stroke  
To the shore, that o'er his wave-worn basis bowed,  
As stooping to relieve him. I not doubt  
He came alive to land."

—*Shakespeare* (The Tempest, Act 2, Scene 1, lines 114-122).

"The brilliant chief, irregularly great,  
Frank, haughty, rash,—the Rupert of Debate."

*Lord Lytton* (The New Timon, page 31).

"A man must be measured, not by individual words or deeds, but by the whole completed record of his accomplishments, and by the dominant motive of his life."—(*Ephraim Emerton* in 7 Harvard Theological Review, 229.)

"Government is a trust and the officers of government are trustees, and both the trust and the trustees are created for the benefit of the people."—*Henry Clay* at Lexington, Ky., March, 1829.

## CHAPTER I.

# EARLY YEARS — FRAGMENTS OF THE EVENTS OF MY LIFE AND TIMES (1817-1833).

[Written in 1865.]

I am now forty-eight years old.

The glories of the world have passed before me, but have not lighted on my head.

I have lived during great events in which I have not been permitted to be an actor; but I have been near enough the scene of action to be able to appreciate the powers and conduct of the actors and the causes of events. A few brief memoranda of them may lend interest to the sketch of my uneventful life.

I was born on the 16th of August, 1817, in Annapolis, Maryland, at the old Parsonage.

My father, the Rev. Henry Lyon Davis, D. D.,<sup>1</sup> was then president of St. John's College and rector or *pastor* of St. Ann's Parish.

The old church then stood in its original form, of colonial origin, with its square, high-backed pews, the pulpit far advanced in the body of the building of the old goblet style, with a lid hanging by a chain from the lofty ceiling; and immediately before our pew was that of the Colonial Governor, with the socket

for the mace which marked his dignified presence.

My father was a man of genius, endowed with varied and profound learning, eminently versed in mathematics and natural science, abounding in classical lore, endowed with a vast memory and gifted with an accurate, concise, clear and graceful style; rich and fluent in conversation, but without the least pretension to oratory and entirely incapable of extemporary speaking.

He was of high tone and temper, the most unbending independence, and sensitive to the least suspicion of soliciting favor even to a marked degree.

He was a Federalist of the most elevated stamp—early embraced and always adhered to. He was a graduate of Carlisle, in Pennsylvania, where he contracted an early friendship for Roger B. Taney, who then was of the same way of thinking on public affairs, and together during the whiskey rebellion they illustrated at once their courage and conviction by heading a party of students in cutting down the liberty pole which the disaffected had erected in Carlisle in defiance of the government.

Their fate was singularly different.

My father was removed from the presidency of St. John's by a Board of Democratic



trustees because of his Federal politics, and while Mr. Taney was in President Jackson's Cabinet my father, at the end of a letter to me, then at Kenyon, gave me my only lesson in politics in this laconic sentence: "*My son, beware of the follies of Jacksonism!*" Such was my father's popularity among the students and his reputation for learning and ability, that nearly the whole body of young men deserted the college and followed him to his private residence for the benefit of his instruction; and his successor, Mr. Rafferty,<sup>2</sup> an Irish Democrat, took possession of an empty college.

This gentleman had the usual amount of letters with which Democrats are usually tainted and, having occasion to deliver an address shortly after his elevation, people were surprised at the eloquence of the style and the familiarity with literature it exhibited, till my father tracked him through his pilferings and in a pamphlet replete with refined and classic Latin shewed the precious stones which glittered on Mr. Rafferty's pages to be fragments stolen from the composition of a number of celebrated writers artfully joined into the mosaic which he palmed on the public as his composition.

Of this pamphlet I have never seen but one copy—probably the only one in existence—

now, I believe, in the State Library at Annapolis.

My mother was Jane Brown Winter,<sup>3</sup> a lady of graceful and simple manners, fair complexion, blue eyes, auburn hair, with a rich and exquisite voice that still thrills my memory with the echo of its vanished music. She was highly educated for her day, when Annapolis was the focus of intellect and fashion for Maryland, and its fruits shone through her conversation and colored and completed her natural eloquence, which my father used to say would have made her an orator if it had not been thrown away on a woman.

She was the incarnation of all that was Christian in life and hope, in charity and thought, ready for every good work, herself the example of what she taught.

She had only two children, myself and my sister, Jane Mary Winter Davis, born on the 29th of January, 1821.

Under the inspiration of our mother's life and teaching, my sister grew into the Christian Missionary, and for years on the coast of China dedicated herself to kindling with her husband, the Rev. Edward W. Syle,<sup>4</sup> the watch-fires for that great nation.

I can boast of no such dedication of my life, nor of any special points of this early training, but the exhortations and warnings so fervid

and incessant from my mother's lips against the vices and excesses which specially beset youth and early manhood have not been wholly without their reward in preserving me from dangers which, with my temperament, would have proved fatal to my body and mind.

My education was begun very early at home. Under the sharp discipline of my aunt Elizabeth Brice Winter, I could read before I was four, though much against my will.

Nearly all my instruction was at home; but for a short time I was among the small boys at St. John's Grammar School.

When my father was removed from St. John's, he went to Wilmington, Delaware, and till he became settled there I went with my aunt to Alexandria, D. C., where I went to school for a while to Mr. Wheat. Thence I went to Wilmington, where I was instructed under my father's supervision, and that instruction continued when, in 1827, he removed back to Maryland and settled on a farm in Anne Arundel county.

There my love for outdoor life and sports gave small promise of scholarly proficiency. I was always too glad to exchange my Latin grammar<sup>5</sup> and Erasmus for a turn in the fields behind a plough and with a scythe taken from one of the slaves, who were always glad of my company and a relief; and before I was

eleven I was inspired with the sporting fever and roamed the country with a gun larger than I well could bear, superintended by a trusty servant, Frank Garner, to see that I did not shoot myself instead of the birds. Frank lived to be set free by me and to enter the United States service during the rebellion, to drive an ammunition wagon through the peninsula campaign of McClellan, till the army lay at Hampton Landing. He returned considerably hardened on the subject of life. "Lord, Master Henry, a dead man ain't no more to me than a dead chicken." He saw the rebel charge at Malvern Hill, and his judgment on the rebels was that they would stand fire very well, but not the push of the northern bayonet. He was my guardian in my holidays and my sports, and he lived to see his race reach the promised land.

In 1830 my father sent his slaves to the Eastern Shore of Maryland. I asked the privilege of accompanying them. We came down the Baltimore and Ohio Railroad in the horse-car, reached Baltimore at night, slept in the car all night. In the morning I set forth to hunt transportation across the Bay, but found the basin and the Bay fast frozen, though early in December.

We could find no conveyance, and set off on foot to walk by way of Havre de Grace and

Elkton to George Town Cross Roads, a distance of eighty miles, the snow ankle deep and unbroken. We walked over the Susquehanna on the ice, and at the end of three days had accomplished our march—a pretty good one for a boy of thirteen years.

My familiar association with the slaves while a boy gave me great insight into their feelings and views. They spoke with freedom before a boy what they would have repressed before a man. They were far from indifferent to their condition. They felt the wrong and sighed for freedom. They were attached to my father and loved me, yet they habitually spoke of the days when God would deliver them, when white people would be punished for their ill treatment, and they constantly considered that their master would have a great account to settle at the day of judgment for them; or, as they expressed it, "Master will have many a black man hanging to his coat tail when he is trying to get into heaven at the last day."

At that time nobody taught that slavery was anything but wrong and evil; the negroes of my father, like other men, were taught to look forward to a day of freedom, either in Africa, or absolutely at his death. I have a letter of my father's to Mr. T. McDowell, of Wilmington, dated 4th March, 1828, at Poplar

Spring, which his daughter, Mrs. Spooner, kindly sent me because of its bearing on the negro question now. In it he says: "By the blessing of God, I am now on my own farm and have servants more than enough to cultivate it. As my black people reach 25 years I emancipate them and send them to Liberia, having first taught them to read."<sup>6</sup>

I and my sister were the teachers for that instruction. Most of them, young and old learned to read well, but none of them could ever be induced to take their freedom on condition of going to Liberia, and they all obtained their freedom only after my father's death from my sister and myself.

The South brought on rebellion and the cotton culture first turned the tide of opinion against freedom and towards slavery; and the Georgia man, with his broad white hat in quest of slaves, was the emblem of the change about 1830. As an illustration of the temper of the times, it may not be unworthy to mention that during my father's absence my mother placed me at a Methodist lady's school. My father, on his return, instantly removed me. He was a most liberal man for his day, but the exodus of the Methodists was then still so recent that they were looked upon as sort of rebel Episcopalians—not an independent sect.

Nor was political temper less violent or more excluded from private life. I once mingled with the boys at a funeral of a Democratic gentleman during the fierce contest between Adams and Jackson, and I was immediately saluted with the inquiry, "What are you doing at a Democratic funeral?". From my kind relation's, Dr. David Davis' hospitable house, where I passed the winter, I went to Alexandria, to the care of my aunt, and by her was put to school under Rev. Loring Woart<sup>8</sup> at Howard, near the Theological Seminary of Virginia.

He was a cultured and elegant gentleman; he married Miss West of the Woodyard and was lost on the Pulaski, whose disaster is famous.

Mrs. Wilmer,<sup>9</sup> the widow of the Rev. Dr. Wilmer, of Alexandria, mother of the present Bishop Wilmer, of Alabama, kept the house, one of the kindest and sweetest of women.

I never have met a man who could lead, control and influence youth as Mr. Woart did. He joined in our sports on the lawn, led the skating matches, the swimming expedition, spoke ex-cathedra in the schoolroom, and in the long winter evenings read Scott's novels to an entranced crowd, giving full effect to the dramatic cast of the narrative by rich and

varied voice. It was a high lesson in the art of elocution.

At that school, which was very select, I met some persons who have since become of note in various ways. Richard Wilmer is a bishop. George, his brother is an eminent minister, who doffed the gown for the rebel uniform and musket. Mansfield Lovell<sup>10</sup> commanded the forces which evacuated New Orleans. Barton Key,<sup>11</sup> long the United States District Attorney in Washington, the son of the author of the "Star-Spangled Banner," whose tragic death at the hand of Sickles<sup>12</sup> convulsed Washington, and Wilmer Connell, my oldest friend living, a friendship inherited from our fathers, now a gentleman of fortune, living in hospitable ease near Philadelphia.

#### NOTES ON CHAPTER I.

1. Rev. Henry Lyon Davis was born in 1775 and died in Howard county (then a part of Anne Arundel county) on his plantation, near Woodbine, in 1837. He graduated at Dickinson College in 1795. He was in charge of St. John's College, as vice-principal from 1816 to 1820, and as principal from 1820 to 1824. Rev. Ethan Allen wrote of him as "a man of much learning, of vigorous mind and of commanding personal stature." (*Steiner's Education in Maryland*, page 106.)

2. Rev. William Rafferty was elected professor of Ancient Languages in 1819, vice-principal in 1820, and was principal from 1824 to 1831.

3. Mrs. Davis's health was much impaired in her later years, so that her children had much of their training from



their aunt, according to the recollection of Governor Edwin Warfield, whose father was a neighbor of Rev. H. L. Davis.

4. "The Rev. Dr. Edward W. Syle, a missionary of this Society in China from 1845 to 1861, died in England on the 5th of October last, in the seventy-fourth year of his age. About a year ago he was stricken with paralysis, but resumed his work. The day before he died he had a second stroke. Mr. Syle, an alumnus of the Theological Seminary of Virginia, was appointed, with several others, at the meeting of the Foreign Committee in November, 1844. Mr. Syle and his wife sailed from Boston on the 28th of May, 1845, and arrived at Hong Kong on the 4th of October following, in time to join in the establishment of the mission station at Shanghai. He visited this country in 1853, because of impaired health, and presented the claims of the China mission with great earnestness and much success. For a time he was engaged by the Domestic Committee in work among the Chinese in California. He returned to China in April, 1856, and resumed charge of Christ Church in the native city. Among his plans for benefiting the people to whom he was ministering, Mr. Syle established an industrial school for blind communicants and such other blind persons as chose to attend. This charity was received with much favor in Shanghai.

"Since his resignation Dr. Syle has been employed in China and Japan, holding chaplaincies for seamen and for foreign residents. He never, however, lost his interest in the Chinese missionary work. For about six years he has been living in or near London, during which time he has been employed with much frequency in representing the Church Missionary Society throughout that country." (Through the kindness of Rev. Dr. Frank M. Gibson, Librarian of the Maryland Diocesan Library, I have been furnished this information, contained in the organ of the Protestant Episcopal Church Missionary Society, *The Spirit of Missions*, for September, 1890.)

5. Creswell, in *Speeches and Addresses* (page 19) stated that Davis always kept his Greek Testament lying on his table for easy reference. On his knowledge of Latin, Creswell (page 18) cites the fact that in a visit to him, shortly before Davis's death, Davis said that he often exercised himself in translating from Tacitus.

7. Dr. Davis was Henry Winter Davis's uncle and was the father of the Hon. David Davis, Associate Justice of the United States Supreme Court, and United States Senator from Illinois (1815-1886).

8. On the loss of the *Pulaski*, see "Steamboat Disasters and Railroad Accidents," by S. A. Howland—Worcester, 1846, pages 59, 88, 89. The steamboat was lost because of "the explosion of her starboard boiler, when off the coast of North Carolina, and on her passage from Charleston to Baltimore, June 14, 1833, by which disastrous event nearly one hundred persons perished."

9. Rev. William Holland Wilmer (1782-1827) was the father of Bishop Richard Hooker Wilmer (1816-1900) and of Rev. George Thornton Wilmer (died 1898). Whitaker's *Life of Bishop Wilmer* (page 17) states that "in 1831 Mrs. Wilmer removed to the Seminary Hill and opened a High School on the site of what is now the residence of the principal of the Episcopal High School. She employed two instructors, both clergymen, and limited the number of pupils to eighteen. The school continued for three years."

10. Gen. Mansfield Lovell, of the Confederate Army (1822-1884).

11. Philip Barton Key, killed February 27, 1859.

12. Gen. Daniel Edgar Sickles (1825-1914).

## CHAPTER II.

## KENYON COLLEGE AND TUTORSHIP (1833-1839).

From Howard we both went to Kenyon College, in Ohio, in the fall of 1833.

It was then the Garden of the Lord for young Episcopalians. Bishop Chase,<sup>1</sup> the literary Daniel Boone of the West, had planted it with money begged abroad; he presided over its destinies with patriarchal despotism till its growth required a different and more steady rule, and then went forth to found another garden farther in the forest, while Bishop McIlvain<sup>2</sup> came to guide Kenyon to its future fortunes.

I got there during the first year of McIlvain.

Wilmer Connell was my *chum*. My letter states the share of the burthens. On rising "Wilmer and I make up our beds; he makes the fire and I sweep out the room. I bring a bucket of water at night for washing; in the morning, for drinking during the day." Shoes shone only on state occasions.

I was the sole representative and substitute of the swarm of black people who ate my father out of house and home.

Under such a system the expenses ought not to have been great; but I read now with some amusement the following:

“My whole bill with Mr. Wing, the treasurer, amounts to \$88—that is, \$30 for tuition, \$50 for board and for the attendance of the college physician during term, \$6 for room rent.” Washing was \$6 per annum.

The mystery of sending young gentlemen from the cultivation of Maryland to the rude West for education found its solution in the ardor of the Episcopal missionary who founded Kenyon. He made it the Mecca of Episcopacy. Towards it all good churchmen worshiped from Louisiana and from Maine. At that holy seat the church had assumed its legitimate prerogative of bringing up youth in the way it should go, and all “churchmen” were enthusiastic in supporting the great protest against Godless education at dissenting seminaries. Thus it was that the best people not only of Louisiana and North Carolina, but from the ends of Maine and the neighborhood of Harvard, sent their sons to Kenyon, that they might sit under the drippings of Episcopal grace.

In these days of extravagance it will hardly be believed that eighty or a hundred dollars covered every legitimate and reasonable expense of a year at the college, and that in the

woods not much more could be spent for want of things desirable to purchase.

This cheapness doubtless quickened the sectarian zeal which prompted so distant a pilgrimage to so holy a shrine. For me it was a fortunate and a determining circumstance.

I crossed the Alleghanies by the National Road, on the top of the stage for the benefit of the scenery. It was my first view of the great ridge which I then climbed so painfully, but over which now the great railway hurries us with such reckless speed. When I crossed the Ohio I saw the new and strange West, the land freed for the development of republican equality. Gone were the smooth and open lands, the aristocratic old mansions and the swarm of slaves to which I had been accustomed in Maryland and Virginia. The skeletons of the forest, bland and barkless, stood amid growing wheat and corn; the houses were small frame buildings, with red gables and red sides, perched on the tops of hills, whence every tree was cleaned, and every horizon was a forest and every house solitary.

But I was pleased "with the general appearance of the country, and especially with the houses, the appearance of which was better than the country houses of those parts of Pennsylvania and Virginia through which I passed."

I arrived at Gambier on the 28th of October, 1833, in a snowstorm, the ground frozen wherever it was bared by the wind—after having broken down four stages, and one of them four times, on the horrible roads and come many times in great danger of being tumbled over.

Kenyon was then the centre of vast forests, broken only by occasional clearings, excepting along the lines of chief transit—the National road and the Ohio river and its navigable tributaries. The main college building was large and solidly built, so solidly that it was singularly enough looked on with jealousy by the “natives” of the neighborhood, to whom its being built with “British” money suggested the suspicion that it was a “British” fort disguised as a college.

Everything but the college itself was of the most primitive and temporary character. All buildings were of wood unseasoned.

The great avenue was unimproved and without even planks or elevated paths, and when the ground was not frozen in the winter that Western soil was worked into mud so deep that it was “an every-day occurrence to see thirty or forty or fifty students strung single file on the top of the fence going to their meals.”

My room was in the *seventy-four*—a vast factory-like building for the younger boys' dormitory and recitation rooms. The green planks had parted company, and through the long seams not only wind but light penetrated. It was like camping out. The snow drifted straight through, covered the bed and made drifts on the floor. No fire would keep the room warm; our blankets were hung round the fireplace to break the force of the wind, and vast piles of wood blazed in perpetual sacrifice to the cold god who would not be appeased. The wood was brought by the country people, and cost us little but the labor of cutting it ourselves. For servants were an unknown luxury, and we cleaned our own rooms, made our own beds, blacked our own shoes and cut and brought in our own wood and made our own fires—when by accident they went out. Such a life was healthy, and to young men of sixteen not unpleasant. We were proof against every form of exposure. My cloak hung untouched for four years on the wall. One night, cold, clear, the moon glittering on the snow, some outlaws from the college invaded *our* department, threw up our windows and covered us with a shower of snowballs, a challenge to combat when we were undressed for bed. We instantly sallied forth just as we were, in shirts and drawers,

into the deep snow, had a battle royal, cleared our territory of the invaders and went to bed in a glow, none the worse for the midnight campaign in dishabille.

It was the day of self-supporting or manual labor schools, by which the difference between learning and labor, the mechanic and the student was to be obliterated; when labor was not to exhaust, but only to sharpen the appetite for letters, and the wearied form was to find rest in the assertion of the independence of the mind on matter.

I with others were instructed from home by my father, by my mother and by my aunt, to engage in the pleasant task of cleaning and grubbing certain acres of new land for—nothing a day; and not a few hours of exhaustion were spent in testing thus fully of this new theory of leveling the inequalities of God. Of course, it failed, and was everywhere abandoned, for it was erecting into a rule the heroic success of a few rare and indomitable spirits who, under the spur of ambition and poverty, did what the mass of students neither poor nor ambitious did not care to attempt and could not be compelled needlessly to accomplish. I lost some hours of pleasure, a few of study and strengthened a constitution already strong enough!

My first year in the preparatory department



was spent in these exercises, occasional gunning contrary to law—repealed by the common law of the West, whose Solon was Nimrod or Boone; and in the studies necessary to secure my entrance to the freshman class next year. Lessons beyond those of my class were exacted of me. My time seems to have been well employed. The most important work of the year was the translation of the whole of Sallust's "*Bellum Catilinarium*," a work which was much more a lesson in English writing than in Latin construction and tended more than anything could have done to fix the habit of brief, sincere and pointed expression. When completed it was sent home to attest my industry and progress.

I joined the Philalethic Society of the preparatory department.

There were two societies, divided between the Northern and Southern students. For this was in 1833; the first attempt of the negro and cotton interest to defy the United States was in 1830, and the agitation had only just been suppressed by the firmness of President Jackson and the conciliatory tariff bill of Mr. Clay; but the division of feeling survived, and in the backwoods among youths at college secession was effected in their societies, a prophecy ignorantly made of things to come.

The one society of the preparatory depart-

ment had been divided the year before I came by the withdrawal of the Northern students, and I joined the Southern society on my arrival.

I am amazed to see what a bundle of Southern prejudices I carried to college with me. Indulging them brought down on me the stern rebuke of my father.

In my first letter to my mother from Kenyon I said: "The Southern students I am pleased with; the Northern I am not much acquainted with and have no desire to be so."

My father had small toleration for such folly, and sharply reprimanded my silly prejudices in avoiding Northern associations, among whom the best students were to be found, and regretted my joining the Southern society.

My presumptuous reply will strikingly illustrate the strength of the virus then already poured into the blood of Southern youth in spite of the liberal views of the parents.

"As to my having joined the Southern society, I cannot possibly conceive where the fault lies. I was from the South, had been born and bred in the South, and why, when there was a Southern society on the hill, I should join the Northern, I cannot conceive. You seem to have gotten wrong ideas of the difference that now exists between Northerners and Southerners. About a year since the

Philalethic was a *neutral* society, and on account of some disagreement between the members the Northerners withdrew from it and formed a society of Northerners. All persons coming from different parts of the Union were expected to join the society belonging to the part from which he comes. The Northerners would never have dreamed of my joining their society. Nothing could be more disagreeable to me than to belong to their society. Their manner and habits are so different from what I have been accustomed. Because I have not joined the Northern side is no reason that I should be at enmity with them. They come to my room and I go to theirs as frequently as anywhere else."

The very germs of separation inspired me unconsciously. My father saw that unity of ideas and feelings is the only foundation of national unity, and strove to keep me in the right path.

Party spirit ran high, and even the discipline of the faculty was impeached of partiality to the Northern students.

"The faculty are nearly all Yankees, and they take care not to depart from their Yankee principles. They are very partial to their kindred. I have known an instance in which a Yankee and Southerner were employed in a frolic together. It was found out—for they

have spies everywhere. The Southerner was brought to trial to answer for his misdeeds and to pay the penalty by dismissal, while the Yankee was permitted to remain in rest and quiet."

Such was the spirit prevailing at Kenyon in 1833 and 1834.

On October 29, 1834, I passed my examination and entered the freshman class. I was promoted to the college building. Wilmer Connell was called home by his father's death and soon plunged into commercial life and laid the foundation of his splendid fortune, with which he now dispenses a liberal hospitality at his country seat near Philadelphia.

My companion now was a Mr. Moore, of Rhode Island, of ambrosial curls, loud voice, vast vanity and little head. His Northern home had taught him to close the doors which my education had neglected and my hardy life in the Seventy-four had taught me to despise, till Moore broke me into civilized habits by calling me from the first to the third floor as if for something urgent, and then pointing to the open door, dismissed me with the lesson.

I pardon him for this and everything else except his allowing me to sleep through the grand phenomenon of the "Falling Stars" of 1834, which to susceptible minds seemed the very emblem of the last day, while he with all

the rest of the college watched those strange fires till they ceased to shower.

What punishment is equal to such conduct?

As the sphere of study expanded the subjects of interest increased. Natural science, political economy, logic, metaphysics as then understood in the United States and England—that is to say, psychology on the basis of Reid, Stewart and Brown—avoiding the deep problems of real metaphysical science, the possibility of external knowledge, the conception of the infinite and the absolute, the vindication of the ways of God to man, or a theodicy unless Butler's Analogy be considered to touch that problem in some of its relations—were seized on and prosecuted with a zest that attested the natural bent of my mind. The foundations for future building were laid.

But the fruitful fields of exploration were those on either side of the narrow highway of the prescribed march.

While a boy of ten or eleven I had become familiar with the classics of Addison, Johnson and Swift, Cowper and Pope and Robertson.

I now plunged into the current of History. It was the transition period from the shallow though graceful pages of Gillies and Rollins, Russell and Tytler, and the rabbinical agglomeration of Shuckford and Prideaux, to the modern school of free, profound and pow-

erful investigation which has reared immortal monuments to its memory in Hallam, Macaulay, Grote, Bancroft, Motley, Niebuhr, Bunsen, Schlosser and Thiers and their followers.

But of these great works none but Niebuhr's History of Rome, Hallam, were then in evidence or known in the backwoods of Ohio. Cousin's History of the Philosophy of the Eighteenth Century was just glittering on the horizon. Gibbon shone alone as the morning star of historic investigation, which he had heralded for so long and which was then breaking.

With the materials I did the best I could. But only think of seeing the French Revolution only in the pages of Burke's brilliant vituperation and Scott's Tory diatribe! A republican picture of the great republican revolution, the formation of all that is now tolerable in Europe, did not exist or was not accessible in any authentic and comprehensive page, and Americans were fed on the foam of English fury and taught to hate Jacobins and revolutionists as if it were not they who forced our principles on aristocracies which hated us, avenged in blood the blood of ages, and did to their enemies what their enemies had done to their fathers through long centuries and

would have done to *them* had they not been anticipated.

So that my reading had to be in great measure unread in more mature days and with ampler resources.

But I imbibed the nourishment before me, was conservative, aristocratic, English in thought and view as much as one can be who lives in the woods and at the antipodes of everything English—a democrat in fact, an aristocrat in word—a contradiction which Southern origin and education tended to develop and conceal.

The English origin of the college, its church spirit and character and the admiration of the bishop for English forms, led to an attempt to naturalize the students' Oxford caps and gowns at Kenyon, but the gown was not a convenient garment to chop wood in, the silk tassel of the cap would make love to the boughs of the forest, its hard flat top rocked to and fro like a drunken man in every gust, and the impatient sons of the West were undergoing perpetual metamorphosis from a gownsman into a Buckeye in shirt sleeves—till the effort was abandoned as against the nature of the Western man.

At the end of the year a change in the college term gave me a vacation of three months.

I spent all my vacations at college—for the distance from home forbade a visit, and I availed myself of the time which must be idle or filled with study to pursue and complete the studies of the Sophomore year, which was ahead, to which I had already devoted myself during the Freshman year; and at the opening of the next session I passed the examination for the Junior class.

It was a pretty sharp trial of resolution and dogged diligence, but it saved me a year at college, indurated my powers of study and mental labor into a habit, and perhaps enabled me to stay long enough to graduate. I do not recommend the example to those more independently situated, for learning must fall like the rain in such gentle showers as to sink in if it is to be fruitful, and when poured on the richest soil in torrents it not only runs off without strengthening vegetation, but washes away the soil itself.

The residue of my college life was more fruitful than its beginning.

The regular studies were respectably prosecuted and have not been wholly without fruit, not merely in knowledge, but what is of vastly more account, the habit and power of mental labor.<sup>1</sup>

These studies were wrought into my mind, made part of the intellectual substance by the



vigorous collisions of the societies in which I delighted. The questions propounded for debate were assigned to two or four chief disputants, heard judicially by the president,<sup>2</sup> before the faculty, thrown then open for the melee of general discussion, and finally the arguments were summed up and the decision pronounced with appropriate and authoritative criticisms on manner and matter by the president.

For these mimic conflicts I prepared assiduously—not ever in writing, but always with a carefully deduced logical analysis and arrangement of the ideas to be developed in the order of argument, with a brief note of any quotation or image or illustration on the margin at the appointed place. From that brief I spoke.

The societies were two—the N. P. K. (Nu Pi Kappa) and the Philomathesian, organized in 1832 or 1833, under the inspiration which divided the societies of the preparatory department, on the basis of the residence of students. This was instigated by and cultivated an exclusive spirit, social and political, which had just threatened to kindle and has since burst into civil war.

I belonged to the N. P. K, the Southern society. The other was the more numerous, equally able in intellect, but different in tone

and composition. The former affected aristocracy; the latter the steady level of Northern society. Occasionally gentlemen crossed the line in choosing their society.

The most brilliant of my college friends, Howard Smith, was of the number—and from Pennsylvania, yet was in the N. P. K. But this was exceptional.

The negro question was an element of division, but not bitter nor exciting. The societies were rivals, not foes, and associations followed predilection and not origin.

But the diversity of feeling lay there, only awaiting the day of development. Among the gentlemen of brilliant promise—not always redeemed in after life—were William Smeyder, of Kentucky, long since a distinguished lawyer of Mississippi; F. K. Hunt, of Kentucky, famous for his brilliant and genial declamation; Horace Smith, of infinite jest, since consul at Lisbon; Stephen Griffith Gassoway, of Ohio, and William F. Giles, of Mississippi, my most valued and devoted friends, who have been snatched from life in the midst of careers full of great promise, were all members of my class when I entered the Junior year, and with such it was a privilege to have been associated.

They were all richly endowed by nature, of the highest moral tone, cultivated vastly be-

yond the beaten track of study. Gassoway was a poet, a writer of great ease and facility, a preternatural power of acquiring, glossed over with a harmless and amusing vanity, which should rather be termed a just appreciation of his powers which he did not care to conceal from his friends, but hounded by the ambition to be an orator, for which he had not one single qualification.

Giles was filled to overflowing with the most varied and rare information, recondite, curious, dusty and musty. If he rolled himself over in the dust of a library, his ever-dear delight, knowledge, stuck to him like iron filings round a magnet, and his rare and antique humor procured him the name of Monkbarnes. Both sought the ministry, were eminent in their studies, but died too early to do anything but make people deplore the loss of so much promise.

I have not met their like since. Perhaps we never do replace the bosom friends of college life.

The authorities of Kenyon were men of mark.

Professor Bache in chemistry,<sup>3</sup> Professor Buckingham<sup>4</sup> in mathematics, Dr. Sparrow<sup>5</sup> in moral science, were men who would have graced any university of Europe.

Dr. Sparrow was a great favorite with the students in the pulpit because of his clear logic, his profound thought and his singularly rich and striking imagery. Wholly without manner or action, except an occasional convulsive throwing forth of the arm to point some pointed sentence, with no gift of voice to attract, his earnest reading, with his eye on his manuscript unless when emphatically lifted or if to force his words into his hearers, always riveted attention, even in the most thoughtless and suppressed the restless weariness of students doing a duty which they wished at an end.

Alas, that a residence in Virginia should have bent his stern principles of morals to the necessary deflection for the apology of slavery and the rebellion for its maintenance.

Bishop McIlvain was a different man in mind and style.

Dr. Sparrow was a recluse and a student; the Bishop was a man of the world as well as a man of God—but not a man of the Western world of that day.

He was bred in the refinements of New Jersey, was versed in the society of Washington when Adams, Webster, Clay and Calhoun shone there, had been long enough at West Point as chaplain to be imbued with its ideas and habits of authority and subordination.

From these scenes he was transported to the wild woods, rough, free, uncultivated, self-dependent people of the West, over whom he was to be a bishop, and at the head of a college which must conciliate their confidence if it were to flourish. His manner and refinement were not helps, but hindrances. Though affable, kind, devoted, indefatigable, of the fine class of minds and of wonderful oratorical power, he looked and felt too much above the average level, was too different from his flock and too little able to assimilate himself to them, in apostolic phrase to be all things to all men—to be as Bishop Chase had been, to acquire a leadership over them—and this he never did acquire.

But at the college this great and brilliant example of a Christian gentleman, who was a bishop without being a bore or a puritan, who set the example by his life of what the highest style of manner was, and what dignity and elevation in character produced in appearance and bearing and conduct, was of infinite use in breeding gentlemen out of the rough material there collected, which professors who were merely scholars might shape and sharpen, but could never polish or decorate.

He was a master of the highest art of oratory. To listen to him on Sunday was a lesson in oratory which could be had nowhere

else in the United States, unless at the feet of Webster or Clay, nor abroad, but from the voice of Brougham. He spoke without a manuscript, except on the rarest occasions or on the most abstruse topics. His style was clear, simple, masterful, but abounding in rich imagery, too rich for any place but the pulpit, but never overdone nor superabundant. His person was elegant and graceful. His pale face and forehead, so bald as to show the clear and noble outline of the head, but not so much as to disfigure.

His action spoke to the eye what his words carried to the mind—not pantomime, but presentative action; not vehement, but earnest; not of the forum, but of the pulpit. His voice was the clearest, the fullest, ringing without a particle of sharpness, filling the whole house, yet not drowning itself in its own reverberations, but the very impersonation of sound which filled the whole house and was everywhere present, but proceeded from nowhere. It descended on you as if from heaven. It was a voice I never heard equaled but by Mr. Clay's. Within a few days, after thirty years, I have had the privilege of having him under my roof and hearing him speak, and time has made no inroad on either his person or his voice.

To have sat under him for four years is a

great and rare privilege, which has not been among the least fruitful of my intellectual trainings.

It may not be uninteresting to mention that during his visit to me lately he remarked that both Jefferson Davis and Robert Lee were at West Point during his chaplaincy; I said that was a serious impeachment of his ministry. He replied: "Hardly so in regard to Jefferson Davis, for he was so low in his classes that he never reached that section which was under my instruction."

The current of college life was undisturbed by any great excitements. The threat of collision between Ohio and Michigan on a question of boundary waked feeling enough to ruffle our calmness, but the United States beneficently thrust the sword between the combatants, gave Ohio the cause of war and indemnified Michigan with the vast peninsula which doubled her territory and wealth and took nothing from anybody, and we all smiled again.

The contest between Van Buren and Harrison was loud and angry enough to find an echo in our halls—premonitory of the struggle of 1840, which was closed by the rebellion. The students of higher grade were enlisted on either side rather by prejudice than knowledge; I am almost ashamed to confess that my lofty and impractical notions of what a Presi-

dent ought to be in point of capacity was near making me balance the weak incapacity of Harrison against my distrust of all Democrats—the only weakness of my life in that respect—and it was this first conflict of Harrison and Van Buren which imprinted on my memory the growing disgust for Abolitionists which then began to take the place of old and universal sympathy for emancipation.

But these were transitory ripples caused by the passage of the great storm.

Amid it all I worked on at my metaphysics and morals, varied by a spell on the public roads of Ohio under its laws, and dreamed of the world without to the close of my career.

On the 6th of September, 1837, at twenty years of age, I took my degree and diploma, decorated with one of the honorary orations of my class on the great day of *Commencement*.

The world was all before me where to choose and Providence my guide.

My father's death had embittered the last days of the year 1836 and left me without a counsellor. I knew something of books, but nothing of men, and I went forth like Adam among the wild beasts of the unknown wilderness of the world.

My father had dedicated me to the minis-



try, but the day was gone when such dedications determined the life of young men.

Theology as a grave topic of historic and metaphysical investigation I delighted to pursue, but for the ministry I had no calling.

I would have been idle if I could, for I had no ambition, and my mother had deeply and often impressed on me the sentiment that a private Christian gentleman was the most dignified and independent character.

But I had no fortune and I could not beg or starve.

Under this irrational instigation, which I was long in getting rid of, I dedicated myself to the law.

I returned to the East by way of Romney, met the first locomotive on the track at Winchester, and behind it went to Charlestown, Jefferson county, Va., where I spent some days at the grand mansion of Bushrod Washington. I fear my scholastic airs made a singular contrast with the habits of the landed gentry of that connection whom I there met, into whose talk of oxen and houses I was foolish enough not to enter, while I gloried in the fine mansions and broad acres which inspired and supported it as if the two things were separable.

For all forms of mercantile pursuits I had no taste and great disgust. I was the subject of the prejudices of my State and time, and,

strange as it may seem *now*, it was then a prevailing sentiment in Maryland and Virginia that trade was not suited for a gentleman who could follow nothing but farming or one of the learned professions without something of disparagement.

Great gains relaxed the rigor of the rule, but still it was the *rule*, and when in 1850 I came to Baltimore to reside, so enlightened a gentleman as Robert E. Scott, of Fauquier,<sup>o</sup> once asked if the Baltimoreans were not all shopkeepers—if there were any aristocratic gentlemen there!!

When I left college my father was dead, his estate deeply in debt, his negroes bound out to save them from sale till their labor could liberate them, and myself and my sister in the meantime in the most straitened circumstances, which our aunt's kindness could only partially relieve.

I sought a tutorship, and for two years dedicated the time relieved from its drudgery to law and letters.

With an eye on the University of Virginia, I read nearly its whole course, and refreshed myself with the pungent and fragrant pages of Tacitus "Histories" and the glowing and brilliant, dignified and elevated epic of the Decline and Fall of the Roman Empire. I exercised myself in translations from the former,

and in transferring the thoughts and images of passages of the latter into my own language. The latter task dispelled the popular error that Gibbon's style is swollen and declamatory, for every effort at condensation proved a failure, and at the end of my labors the page I had been foolish enough to attempt to compress had expanded to the eye when released from the weighty and stringent fetters in which the gigantic genius of Gibbons had bound the thought.

The experiment was instructive and useful, though a failure.

Under this pecuniary pressure the strength of my old-fashioned feelings towards slavery was subjected a severe shock.

The sale of my share of the slaves would instantly have placed me in funds to pursue my studies at the University and borne me over the *dead point* of the machinery of the law at a beginning career.

In reply to an offer of a connection of the family to purchase the slaves, my feelings were in April, 1839, expressed thus:

“MY DEAR AUNT: I received a letter at last from the Doctor (Dr. Davis) several days since. He mentioned that Captain J. Allen stated that he would purchase Sally if I had no objection. I am not certain whether Sally was set to my share in the division made by

the Doctor and have not a list with me from which I can satisfy myself. I wish Jane would consult the memorandum she has, and if it should happen that Sally does belong to me, let me know. If she is the property of Jane, of course I shall make no objection in character of administrator even if it is within my power to do so. But if she is under my control I will not consent to the sale, though he wishes to purchase her subject to the will" (i. e., to be free if she would go to Liberia).

I have still, now lying before me a brief demonstration of the *impossibility* of hereditary slavery on any moral ground, written just before this letter in 1838, in the midst of Virginia slaveholders, when a doubt was damnation, political and social!

While waiting the opportunity of going to a law school I had a very advantageous offer from a gentleman in Mississippi, and I was about to accept it, but the final letters were delayed and I remained in Virginia. It is singular now to see from my letters, intimating a thought of going to Mississippi, what a cry of horror it extorted from my pious aunt, and it illustrates what is now almost inconceivable, what a sink of iniquity, what a broad road to destruction that region was then considered.

Finally my aunt sold some land in 1839 and dedicated the funds to my legal studies.

The relative advantages of private and university study were largely and anxiously debated in my letters, and I maintained the latter with vigor and success.

The superiority of the Virginia, the Massachusetts or the Connecticut school was then considered and decided—not so wisely—in favor of the University of Virginia.

Aided by my aunt's munificence, the same love which began my infantile education, which bore me through college and which so many of my most costly books still attest, I arrived at the University of Virginia in October, 1839.

#### NOTES ON CHAPTER II.

1. Rt. Rev. Philander Chase (1775-1852), uncle of Chief Justice Salmon P. Chase.
2. Rt. Rev. Charles Pettit McIlwaine (1798-1873).
3. Benjamin Franklin Bache (1801-1881).
4. Catharinus Putnam Buckingham (1808-1888).
5. William Sparrow (1801-1874).
6. Robert Eden Scott (1808-1862).
7. The schools of Harvard and of Yale.

## CHAPTER III.

THE UNIVERSITY OF VIRGINIA  
(1839-40).

The University of Virginia is divided into schools in each of which a separate diploma is awarded, but bound together by a common government into the University. Its schools did not in 1839 at all complete the cycle of sciences or departments of human learning. The Schools of the Greek, Latin, of the Modern Languages, of Mathematics, of Physics or Natural Science, of Chemistry, of Law and of Moral Philosophy were, I believe, all that then existed.

The Classical School was under a plodding pedant, Gesner Harrison;<sup>1</sup> that of the Modern Languages under a polyglot German<sup>2</sup> smelling of assafœtida, who was shortly after my day expelled for whipping his wife, and his varied knowledge being united in no one, several professors discharged his functions. When some one complimented him on this tribute to his learning, he replied: "Ah, yes, it takes a great many fips to make a thaler!"

Under him I got a smattering of French and German, with a compound pronunciation of both.

Professor Rogers<sup>3</sup> gave a national character to the School of Natural Philosophy and Geology, and I enjoyed the privilege of attending and profiting by his eloquent and original lectures during the brief course.

Professor Bonnycastle<sup>4</sup> raised the School of Mathematics to deserved celebrity and enriched it by his contributions to mathematical investigation.

Moral Philosophy was taught and made ridiculous by Professor Tucker,<sup>5</sup> who stuck in the outer bark of English and Scotch Mental Philosophy, gave his students the vertigo by the narrow circle in which he revolved, and tried to enliven his disquisition by stale traditional jokes and stories, which descended from class to class and year to year like intellectual heirlooms of the school.

His work on the Progress of the United States in Wealth and Population in fifty years is, however, a most valuable and meritorious summary of national progress and the first scientific effort to make statistics luminous in this country.

Professor Davis<sup>6</sup> presided over the Law School—a most amiable and excellent gentleman, but one wholly without experience as a lawyer and wholly incompetent to deal with the high and abstract principles of judicial science.

His lectures were little besides readings on the Virginia Statutes and their construction by the Virginia Court of Appeals. He did attempt to illustrate the law of tenures as modified by Virginia law, but the pamphlet was wholly unintelligible in theory and worthless in practice—the despair and agony of successive generations of students—which, if not understood, must be memorized at the peril of losing a diploma.

The University Buildings consisted of a miniature of the Pantheon of Agrippa at the head of a broad lawn, on either side of which were two rows of dormitories, after the fashion of negro cabins, broken at regular intervals by the professors' houses, which rose above them—all of substantial brick and generally kept in good order.

The lecture room and library occupied the Pantheon, or rotunda.

The genius of the institution looked down on it from Monticello—the Holy Mount—the residence of the founder of the University and the fountain of its inspiration, moral and political.

In striking contrast with Kenyon, here no sectarian, no religious bias or basis was recognized.

The University employed no chaplain; no



prayers opened the day; no service was enacted on Sunday.

Still the students employed and paid by voluntary contributions a chaplain, who was chosen from year to year, in concurrence with the authorities, and the services were respectably and respectfully attended by the general mass of the students. The theory of Jefferson remained—the practice of a more believing age prevailed over it.

But Jefferson's political ideas permeated the whole body of the students and infected the whole atmosphere of the slave States—not without an element of strong antagonism, but one never strong enough to throw off the moral malaria.

It is among the singular anomalies of history that the devotees of Jefferson's political theories of State's rights and constitutional construction were the most violent opponents of his views on slavery and the rights of man in the negro.

I was soon sensible of a great difference between the sentiment of the mass of the students and that of Maryland in my boyhood; perhaps my Ohio residence made me more sensitive to the slightest change of temperature.

I remember being rather disgusted by the change from Maryland to Ohio—from the cul-

tivation and distinction of classes to the rough dead level of the West—and on my return I remember I was struck with a sort of revulsion of feeling at the aspect of slavery which I certainly had not carried with me to the West. But with the great mass of students it was the natural, the only tolerable or possible state of the negro. It was not frequently the theme of discussion, though sometimes its relation to the principles of freedom were looked in the face, and then it was generally admitted to be at once irreconcilable and irredeemable. On this topic I still possess my own opinions in writing of that date.

On the theories of the Constitution there was more discussion, and I had sat at the feet of Clay and Webster as the rest had of Jefferson and Calhoun; the war was waged fiercely during my year at the University. There was, however, then still a great body of dissenters from the Jeffersonian theories in the University, as in the slave States—but always a minority on the defensive and gradually driven to occupy or concede more and more of the ground of their adversaries—till finally their opposition was a protest without principle, and the admission was universal, either tacitly or expressly, that the slavery interest found its only secure bulwark in the supremacy of the States, the right of nullification or secession,

or the denial or limitation of every attribute of sovereignty of the United States.

But this logical and systematic result had not then been impressed on the Southern mind; it was the dream of a few, and the drift was towards it, and it was involved remarkably, but surely, in the general principles of *State rights*, which was everywhere taught and in one sense or another generally accepted.

I was always on the *other* side, as well in theory as in practice, and was vigorously denounced for a Federalist.

Professor Davis was the preacher of Jeffersonianism, and certainly the *Federalist*—Our text-book on the Constitution was a sufficiently curious work, read by the light of the Jeffersonian Commentator! Story was “suspected” and ostracised. Webster’s arguments were answered by the imputation of Federalism and the shrug of the shoulders. *The Doctrine* was then expounded ex-cathedra—with a glance to the Holy Mount—and the young men went home *sufficiently instructed* to make the rebellion, for it is that generation of students who have prepared, organized and led the rebellion. R. M. T. Hunter and Seddon<sup>6a</sup> had just left the University a year or two when I got there. Mr. Orr, of South Carolina, and Clay, of Alabama, were there during my year.

The tone and bearing of the students was high and manly; their cultivation was not equal to it. The sense of personal dignity and self-importance was developed in an exaggerated degree. The duel was the only soap for tarnished honor. Every year supplied its examples of wounded honor seeking a surgeon at Bladensburg or some other point in the proximity of Washington; the young gentlemen mysteriously vanished from sight, reappeared beyond the "*Commonwealth*" and sought or accepted distinguished advice at the seat of the government. Arguments and views from distinguished lips were found more persuasive after a long journey and in the neighborhood of the historic field of civil war, and after applications of emulcents, the scorned honor reappeared without a stain and the skin which held it without a scratch at the University; and so the farce ended.

The English education of most of the young men was always found to have been sadly neglected; but, its existence being *assumed* as the condition of admission, scarcely any attention was paid to it at the University; and if the little examination in spelling and writing grammatically could be scraped through, nothing more was required and little more was likely to be attained.

The examinations were very rigid, but no

one was required to undergo them unless he aspired to a diploma, and then he must be very thorough or he failed. A considerable proportion took diplomas in one or more schools, but very few took the Diploma of the University, which required diplomas in perhaps five schools and a general examination on them all at the end. Those who took these grand diplomas were generally hard students of more industry than mind. There were some distinguished exceptions. But the habit was to select two or three schools, at the fancy of the student, and devote the stay at the University to *them*. This gave the education a very partial and imperfect character and left the graduate with a narrow view of the field of knowledge and a very imperfectly developed and ill-balanced mind.

The literary societies were not well attended or well sustained—at least not so well as at Kenyon.

I acquired a little French and German, enough to perfect, after leaving the University; attended Professor Rogers's lectures in geology, which were very few and brief that term, and devoted my chief time to the crabbed and jealous jade of the law.

I have described, I think, justly the lectures of Professor Davis.

On International Law Vattel's amiable generalities and shallow philanthropy was the text-book, for Wheaton's vigorous and historic work was of Northern origin and fit only to furnish the supplemental notes of the professor. Kent was too Federal to be visé across the lines. Story, not orthodox on the Constitution, was unavoidable in Equity Jurisprudence and acquiesced in.

Stephens's scientific exposition of pleading was judiciously chosen and infinitely instructive, but on a dead science, which every Legislature strove to bury rather than to revive, and on which every practising lawyer, after exhaling eulogies on its subtle refinements, united with the antagonist to declare worthless by agreeing in stereotyped form in every cause "to waive all error of pleading and allow either party to give any evidence competent under any form of pleading." Still the study of that beautiful work was admirably calculated to form the mind of a scientific lawyer, and I for long years have done it homage at the end of many a well-fought and successful struggle.

The chief training of the school was found in the venerable but now obsolete volumes of Coke on Littleton, whence streamed that glad-some light of jurisprudence with which the old master of legal torture prophetically bids

his disciples farewell at the end of his book and the beginning of his battle.

The labor I devoted to mastering the invisible distinctions, to noting the endless diversities of the recondite principles of the old law of real property, is now powerful even in the remembrance.

Often in despair I have closed the book and sunk on my bed, wearied out with expositions I could scarcely grasp and whose application I could not see; sometimes I have thrown the book across the room in my wrath, and once my fellow-students attest having caught me kicking it over the floor in a moment of mental agony. Still I mastered it, and I think in that work I did penance for all legal sins of the future, and all work has since been easy. I have found myself since armed where others have been naked in the day of battle—familiar with matters which were mysteries to competitors who had not been instructed in its mysteries, and able to explore my way over trackless wastes of controversy to a safe conclusion, where those who studied by the stars of “modern instances” were lost because they did not appear for many days.

I set down Coke on Littleton with the hickory rod on my shoulders in my youth as the great instruments of whatever in law or learning I have been—but instruments abhorrent to

the humanity of modern homes and banished from school and college with the rack, and Thomas Aquinas of a barbarous age.

Whereof let this little suffice the diligent reader.

It is quite certain that Professor Davis was no light in that labyrinth!

There was a moot court, in which I tried the edge of my logic on several occasions, but it hardly can be called part of the training of the University.

Of society at the University there was little, except the students; and the professors considered themselves responsible for one party to the class; they were always affable and polite, treating their students as gentlemen younger but not below them, and this conduct was met in the same spirit. A high tone of personal conduct prevailed. The exceptions were marked, but few, and punished by a singular want of consideration among the students who had a just public opinion of their own very free from the usual bias of antagonism to the authorities, which mitigates low conduct to mere rebellion against unjust oppression, whose ministers are the professors. Their discipline was generally supported, because free and not petty, nor beyond what was necessary. There was little coarse dissipation; practical jokes were thought unbecoming; ladies' society



was eagerly sought, and the neighborhood swarmed with that peculiar growth of all colleges—antique unmarried maidens, at whose feet many generations of students have sighed, revived, been accepted and forgotten—with no lesion of the heart to either party—the one so often impressed that it has become elastic, the other under a southern sun melting to accept the image of the adored, and melting as easily before another flame to take the features of the successor.

In May, 1840, was held at Charlottesville one of those Episcopal carnivals known as the Episcopal Convention of Virginia.

In other dioceses the convention is a grave convocation of politic clergymen and laymen to pass canons, administer discipline and go home.

In Virginia it was then a spiritual carnival, an ecclesiastical frolic, a religious revival and a time of great social and physical outpouring and refreshment. Prayers and preaching, dining and visiting, salutation and parting consume the days and nights. The early dawn sees long lines of worshipers streaming to the morning prayers and lectures in many churches. All denominations open their churches for the Episcopal clergy—who accept, but never reciprocate the courtesy. Pulpit orators from distant dioceses crowd to the

theater of doing good to souls—or themselves. Reputations are made or marred. Rich livings follow a bold flight or a fervid appeal. Ladies and gentlemen, young and old, sit in judgment on the sermon of the day. Vast crowds gather from every part of the State, and not a few from distant States. All houses are open. Every lady competes for the privilege of entertaining an angel not unawares; and these angels of the churches think they are enjoying only their own. “Is the Bishop putting up with you?” was once the innocent inquiry of a gentleman. “Oh, no,” was the hostess’ reply, “we are putting up with him.” Surely there was no more venerable or venerated man than this Bishop, but the witty reply points the tale and paints the scene in the colors of the time.

For weeks the ladies are devoted to housewifely preparations for the feast, that there may be plenty and yet time to mingle the spiritual with the social delights.

Such is a faithful picture of the Convention of 1840 at Charlottesville, as it is fixed in my memory, of which glimpses float out in my letters of that date. Not a few names of note rise before me—some of promises not performed, some who sleep forever, some who still stir the world to flee from ruin to righteousness. That great Bishop, Meade,<sup>7</sup> born to

rule men, lived to bow to the storm meaner men had raised to bless the rebellion in the name of God, and died in the hopeless struggle to prove by an appeal to the Lord of Hosts that slavery is a Christian institution.

He presided over and inspired the convention.

When it was over I thus described to my sister its characters and impressions.

"This morning, after a week of bustle and confusion, prayer and dissipation, preaching and visiting, the American carnival closed and Charlottesville relapsed into its wonted dullness.

"The crowd that took the sacrament was immense; more than forty were confirmed; and Dr. Tyng,<sup>8</sup> of Philadelphia, recalled by his eloquence, his action and the depth and beauty of his thoughts, the splendid efforts of Bishop McIlvaine.

"Mr. Davis sent me your letter and requested me to call on him; I did not hear his sermon, but some one informed me that it was rather too learned for a sermon delivered before a promiscuous audience. Mr. Slaughter<sup>9</sup> preached once, and his effort was spoken of in the highest terms; I was so unfortunate as to lose it.

"Dr. Keith<sup>10</sup> has, unfortunately, deserted written for extempore sermons; but this mode

is not so efficient nor so interesting as the former. His written discourses were remarkable for their ability and eloquence; his extempore effusions possess more of animation, energy and feeling, but not enough to compensate for the loss or the sacrifice of profound reflections and beautiful style which so remarkably enriched the former. It is the child of his old age; he pets it till 'tis spoiled, then is too blind or too devoted to descry its faults.

"Mr. Parks,<sup>11</sup> an accession to the banner of Episcopacy from the ranks of the Methodists, has a vast reputation for wonderful eloquence, supported, however, by but a slender foundation; his delivery is devoid of grace; his animation degenerates into violence; his voice has not yet lost the Methodistical whine—a whine that gradually increases till approaching termination of the sermon gives the signal for a copious effusion of tears and choking sobs, which, acting by sympathy on his audience, produce corresponding manifestations of feeling equally gratuitous, uncalled for and ridiculous."

This was the religious revel of the year; but the country was now agitated by the swelling tide of discontent which swept the Democrats from power and gave a treacherous promise of a change of policy. Harrison and Van

Buren again contested the palm. The predictions of financial ruin which filled the last years of President Jackson had been fulfilled under President Van Buren; the Whig statesmen were now the prophets of the country, and the victory in the fall of 1840 placed them in power—for a day.

My first knowledge of political speaking is of this date.

I heard with great delight Mr. William C. Rives,<sup>12</sup> in the Court House at Charlottesville, vindicate his "*consistency*" in Virginia phrase, impeached by his desertion of Mr. Van Buren and accession to the cause of General Harrison. It was then the Virginia dogma that consistency in a public man was what chastity is to woman, and that consistency meant holding the same views and applying the same measures in every variety of circumstances.

Of the merits of the controversy it is not worth while to speak; the vindication was to me a novel experience in oratory.

I stood in a window, holding myself up by the sash for *four hours*, for length and not brevity was the test of merit in Virginia, and every theme was deduced from the resolutions of '98.

Mr. Rives spoke with wonderful energy—not violently, but with an intensity of gesture

and utterance, a simplicity of expression, an absence of rhetorical amplification and a directness and practical plainness worthy of all admiration, wholly different from the perfunctory drawl which prevails in the pulpit, and equally different from fine pulpit oratory, with its well-rounded periods and elaborate imagery. It was a man in earnest, not over nice in his weapons, but bent on beating down his foe. Mr. Ritchie,<sup>13</sup> of the *Richmond Inquirer*, had impeached him of inconsistency, and he was on trial for his life. That paper was the Bible of all good Democrats; it bore the impress of the Jeffersonian era and ideas; its enmity was ruin; its suspicion was dangerous. Mr. Rives' speech was an encounter with his paper; its editor he "*denounced*" as "alternately the lickspittle and the libeller of every public man of Virginia." This phrase sticks yet in my memory.

But the *Inquirer* remained master of the field, and Mr. Rives never recovered his hold on the Virginians.

I left the Court House impressed with a new idea of the contests of real life, debating in the Senate, and the fervid appeals which sway multitudes.

## NOTES ON CHAPTER III.

1. Gessner Harrison (1807-1862).
  2. George Blaetterman vide Herbert B. Adams's Thomas Jefferson and the University of Virginia (page 160).
  3. William Barton Rogers (1804-1882).
  4. Charles Bonnycastle (1792-1840).
  5. George Tucker (1775-1861).
  6. John A. G. Davis (1801-1840).
- 6a. Davis's chronology is not exact as to R. M. T. Hunter (1809-1887), who left the University before 1830. As United States Senator from Virginia, he framed the tariff of 1857. He was thought of for the Presidency of the Confederate States and was Secretary of State and Senator therein. James A. Seddon (1815-1880) graduated from the University of Virginia with the degree of B. L. in 1838, and was afterwards a member of the Congress and Secretary of War for the Confederacy. James L. Orr (1822-1873) graduated at the University in 1842. He was speaker of the Thirty-fifth Congress, and afterwards became a member of the Confederate Senate. After the close of the war he became a Republican, and when he died he was Minister to Russia. Clement C. Clay (1819-1882) graduated at the University of Alabama in 1835, and completed his law studies at the University of Virginia in 1840. He was a member of the United States Senate, and afterwards of that of the Confederate States.
7. Rt. Rev. William Meade (1789-1862).
  8. Rev. Stephen Higginson Tyng (1800-1885).
  9. Rev. Philip Slaughter (1808-1890).
  10. Rev. Revel Keith 1792-1842).
  11. Rev. Martin P. Parks, rector of Christ Church, Norfolk, where the Convention had met in 1839. He soon afterwards became chaplain of the U. S. Military Academy at West Point.
  12. William Cabell Rives (born 1795, died 1868).
  13. Thomas Ritchie (1778-1854).

## CHAPTER IV.

PRACTICE AT LAW IN ALEXANDRIA AND BALTIMORE  
(1840-55).

After leaving the University of Virginia, Davis entered upon the practice of the law in Alexandria, Virginia. There "his ability and industry attracted attention,<sup>1</sup> and before long he had acquired a respectable practice, which thenceforth protected him from all annoyances of a pecuniary nature. He toiled with unwearied assiduity, never appearing in the trial of a cause without the most elaborate and exhaustive preparation, and soon became known to his professional brethren as a valuable ally and a formidable foe."

He was tall, standing six feet in his stockings, had dark hazel eyes and curly brown hair, and wore a moustache on an otherwise clean-shaven face. On October 30, 1845, he married Miss Constance C. Gardiner, daughter of William C. Gardiner, Esq.<sup>2</sup> She is described as "a most accomplished and charming young lady, as beautiful and as fragile as a flower." She lived only a few years after their marriage, and grief over her loss may have been one of the causes which determined him to leave Alexandria.



While practising law at Alexandria in 1849 he is said to have voted against the establishment of district free schools and to have contributed to the columns of the *Alexandria Gazette* for April 25 and May 3, letters signed "Hampden," in which he opposed the election of a State's Right Whig to Congress and contended for the supremacy of Congress over the Territories, with a right to abolish slavery therein.<sup>3</sup> He removed to Baltimore in the next year and acted as attorney for Rev. H. V. D. Johns in a difficulty he had with Bishop Whittingham, because Dr. Johns had officiated at a service in the Eutaw Street Methodist Episcopal Church.<sup>4</sup> Although throughout his life he was a member of the Protestant Episcopal Church, he showed his independence of ecclesiastical action again, three years later, in the publication of a pamphlet attacking the bishops for acquitting Bishop George W. Doane, of New Jersey, from charges which had been preferred against him.<sup>5</sup> Davis's friend Creswell<sup>6</sup> described him as a "man of faith," who "believed in Christ and his fellow-man." "His implicit faith in God's eternal justice and his grand moral courage, imparted to him his proselyting zeal and gave him that amazing kindling power which enabled him to light the fires of enthusiasm, whenever he touched the public mind."

"His private life was spotless. His habits were regular and abstemious, and his practice in close conformity with the Episcopal church of which he was a member. He invariably attended divine service on Sunday, and confined himself for the remainder of the day to a course of religious reading."<sup>7</sup>

He was scrupulously neat in his dress, and usually wore a red or a polka dot necktie. His social gifts soon brought him into friendship with other lawyers, and he formed one of the original members of the Friday Club, which met weekly on Friday, from 8 to 12 P. M., at the houses of its members. The club was formed by a brilliant group of lawyers in November, 1852, and Davis often came over from Washington to the club's meetings while he was a member of Congress. The club was broken up on March 22, 1861,<sup>8</sup> by the outbreak of the Civil War.

Aristocratic in his bearing, he knew how to win men by his commanding manner. The story is told<sup>9</sup> that after a political meeting Davis wrapped his cloak about him and went away without speaking to any one, and that on the next day a butcher in the market said that he intended to vote for Davis from that very reason. Yet in his arguments he sought to convince, not to drive, and in his eloquent sentences he displayed a wit that "suggests the

play of a Damascus cimiter that flashes and scintillates as it sweeps the air.”<sup>10</sup> His fearlessness at the trial table is shown by the story that when Reverdy Johnson, the leader of the American bar, twitted him for taking notes, Davis, with a quick reference to Johnson’s impressive voice, retorted: “Yes, Mr. Johnson, but you will please remember that, unlike the lion in the play, I have something more to do than to roar.”<sup>11</sup>

At the Baltimore bar, Davis made a brilliant career for himself and rapidly achieved success.<sup>12</sup> He soon entered upon a political career and obtained such a reputation as a speaker, through his address to the Whig National Convention of 1852, that, when he was a candidate for election as a presidential elector in that year, he was not only called on for such local occasions as a joint debate at Marley Bridge, in Anne Arundel county,<sup>13</sup> but was even summoned to speak at a Scott meeting at Niagara Falls, where he occupied the platform with Horace Greeley and Robert C. Winthrop.<sup>14</sup> He had been a resident of Maryland for only two years at that time, and showed his interest in the attitude of the Roman Catholic church by writing to John M. Clayton to inquire if it were true that nine Roman Catholic bishops had pledged themselves to support Clay for the Presidency.<sup>15</sup> In

1852 he published his only book, "The War of Ormuzd and Ahriman in the Nineteenth Century,"<sup>16</sup> the title page of which bore appropriately a quotation from Demosthenes. It is a young man's book, turgid and over-rhetorical, and yet contains passages of great power. Wide reading in both ancient and modern history and an earnest, fervid spirit are shown. The Crimean War had not as yet revealed the weakness of Russia, and to Davis that great empire was a menacing danger to the world. He would appeal to the people of the United States to resist its onslaught, ere there came a world-embracing, despotic empire.<sup>17</sup> "Within the four score years of the life of man, two powers have grown from insignificance to be the arbiters of the world," Davis wrote. "Each is the incarnation of one of the two great spirits—pure, absolute, unchecked, uncontrolled, unlimited—which have always striven and now still strive on the theatre of nations for the mastery of mankind. These two spirits are liberty and despotism—the Ormuzd and Ahriman of the political world. Their purest emanations are the Republic of America and the Empire of Russia." In other nations the principles of liberty and despotism are mingled, but "it is only in the Republic of America that the people, imbued with the spirit of liberty, are the recognized,

uncontrolled, unquestioned, sovereign power. It is only in Russia that the emperor is met by the cheerful, unquestioning, submissive and the affectionate devotion of the people." Anticipating the objections that the negro slaves were under despotic rule and that the Poles were discontented, Davis said that these facts were not important enough to be considered, and insisted that the United States had "thriven among the arts of peace and industry," while Russia "has gorged its greatness by the spoils of war and fruits of intrigue." <sup>18</sup>

In Davis's opinion, "in this age of the world, two principles of government divide mankind. The one theory, rejecting with contempt the shallow fiction of the social contract, and with indignation the impious arrogance of the 'right divine,' traces the fundamental principles of civil society, in the nature and wants of man, written there by the finger of God and surrounded by feelings, tendencies and capacities which, in their natural development, assume the shape and attributes of national existence under formal governments." He believed that "the purposes of civil society can only be attained by the instrumentality of government, reducing to the forms of law the will of the nation and coercing submission from its individual members. The right to prescribe these laws and direct their execution

is sovereignty. That power in the State which holds that right in the last resort is the sovereign power. The persons who actually apply and execute those laws are the officers and delegates of that sovereign power. Wherever that sovereignty resides, it must be absolutely uncontrollable and arbitrary." Such is Davis's political theory. "The controversy of the age disputes the residence of that ultimate sovereignty. We maintain that it resides in the mass of every nation. A majority has no inherent rights; it is an artificial creation; it holds only a delegated power; it is only the instrument provided by the previously declared will of the nation for ascertaining its decision under given circumstances." <sup>19</sup>

We can see the reasons why Davis was so ardent a Unionist as we read: "It is the nation only which is sovereign. The mass of the nation is necessarily somewhat indefinite, but each case must be adjusted as it rises. One man could not be allowed to impede the will of all the rest, nor would a majority of one be any ground, except for the provisions of positive law, for the control of the other half of society. It is the duty of mere fragments of the nation to yield their opposition to the general will." <sup>20</sup>

"The despots of Europe," on the other hand, "deny any participation in the attributes of

sovereign power to the nation; they arrogate them absolutely to the crown. Kings are the plenipotentiaries of God, who imparts to them the absolute power of sovereignty. In his name, they rule with absolute sway his subjects; they are responsible—not to the people, not to the nation—but to God, the source and giver of their power.” “The scourge of a merciless ruler” may “be a misfortune to a nation,” but it has no right to demand a change. The “responsibility of an ambassador is to his sovereign,” and the “only right of the subject is prayer to God for relief, or for vengeance, or for patience.”<sup>21</sup>

The author next discussed European history since the downfall of Napoleon, believing that the “Holy Alliance was a scandalous conspiracy against the liberties of mankind.” He traced the story through the conferences of Laybach and Verona; the crushing of the constitutional movements in Spain, Naples and Poland; the downfall of the Bourbons in France; the revolt of Europe in 1848 against the “holy conspirators” and the recent overthrow of Kossuth in Hungary. His ardent imagination saw a dictatorship of Russia on the Continent of Europe and believed that the American Republic should ally itself with England and face the prospect of the last war of freedom and despotism. “The crown of

Hungary was for centuries elective," Davis wrote, "as were all the other crowns of Europe, that now forget their lowly origin in their lofty claims to the right divine. The mists which have hung around the morning of history have always been the refuge of royal pride to conceal the nakedness of its birth. It has ever aspired to draw its title to rule from the gift of God, rather than the will of man, and the illusion of historic perspective which blends the heavens and the earth in the distance of the dim horizon has served to veil the fiction of a divine diploma for usurpations which time has half covered with the hoary emblems of right. The pestilent delusion has hitherto proved ineradicable, save by the sword or by the ax." <sup>22</sup>

He held that from the Czar there was more danger to the world of an universal empire than there had been from Charles V, Louis XIV, or Napoleon; that the dictatorship of Russia in Europe is absolutely inconsistent with the experience of the English monarchy and the American Republic as free, popular, representative governments." The only alternatives before us are "a war in Europe, now with allies," or war hereafter, on our own soil, without allies.<sup>23</sup> With Napoleon III in France, there was no hope to the cause of liberty there, and no other continental power was "able to



stay the march of Russia to universal empire." The Czar is "not only the arbiter of Christian Europe, but also the master of Mohammedan Europe," and thus controlled the answer to the two great problems of Europe in the nineteenth century—the fates of the Ottoman Empire and of free principles. So long, however, "as England exists, resplendent in all the glories of liberty, despotism can find no safe and quiet abode on the Continent of Europe." <sup>24</sup>

History, in ancient times, showed what the danger was. "The Grecian genius has left the model of liberty for the inspiration of future ages. It has also left the plan by which it may be encountered and destroyed. Every usurpation of a later day, effected by anything but barbarous force, has been a coarse and distant imitation of the classic art, with which Philip subjugated the fierce and turbulent democracy of Greece. The rise of the Russian Empire and its march to the control of Europe is the closest imitation history furnishes of the great model. Europe awaits her Chæroneæ." <sup>25</sup>

In the United States, the "North is filled with the fanatics of liberty, as the South is with the Quixotes of slavery." Where there is compromise, it is because the balance is turned by a small minority of moderate men.

"The Compromise Bills of 1850 have not laid the infernal spirit of sectional agitation. The day of final collision is adjourned; it is not gotten rid of. Emancipation, or disunion, may be the only alternatives. The eagle eye of Russia will not fail to mark such opportunity." Mexico may ally herself with Russia, which, on "the west coast, is an American power, nearer our possessions than we are." It is true that Washington warned us against entangling alliances, but an English alliance now comes under the exception he made of "temporary alliances for extraordinary occasions," and the instructions he gave Jay, as to an armed neutrality, hinted at the possibility of an alliance with other nations to support our principles. The other great principle of our foreign policy, the Monroe doctrine, also was "the formal adoption of the policy" which Davis advocated, for "Russia now invades, or seriously threatens our rights," and J. Q. Adams, in his Panama message, "declared that, in our sphere, and in our day, and according to our measure, and as far as is complete with our safety, we are on the side of liberty, not merely in word, but in deed."

In 1853 Davis delivered the closing address before the Maryland Institute, an eloquent and scholarly oration, which was published in pamphlet form. He told his hearers in

glowing sentences, "the history of labor is the oldest and will be the last of all histories." It begins with the fall of man—it will end only with his race. It antedates the ruler and the priest, and it will survive or cease with them."

"God inflicted labor as a penalty. His mercy softens it into a blessing. The pride of man has perverted it into a disgrace."

"Industry, in its widest acceptance, embraces every active exercise of the powers of mind or body for the production of any useful object or result. The subjects of industry are the same in every age—some exercising the higher and other the lower faculties, some level to the capacity of all, others attainable only by the few, but *all* intended to be pursued for the comfort and elevation of man in this his lower abode. In the eye of God, all are honorable, for He made the faculties of man to be exercised, not to be idle. In the eyes of the primitive patriarchal society, all occupations were honorable, for all were the offspring of some of the faculties of man. But, from that day to this, pride and power have sought to elevate themselves on the shoulders of the multitude and, to mark the distinction, they have stamped the pursuits of the multitude with contempt. The favored pursuits have varied in different ages, but the relation

between them and others has ever been that of the honorable and the despised." He considered the history of Greece, Rome and the Middle Ages, and noted that the Americans had succeeded in agriculture, mechanics and commerce; but had not as yet excelled in science, the fine arts or literature. Political economy had treated of wealth, not man, but now the beginnings of social legislation were found in England. Socialism is urged by some. "As a whole," when examined, "it can never be adopted, as no theory has at any time been adopted by men for the reconstruction of society, but it will furnish new and fertile suggestions. It is penetrated with a moral idea which is mighty for the elevation of the working classes." This early recognition of the importance of socialism is notable.

After praising the Odd Fellows, he takes up subjects of local interest—the tobacco warehouses, the public schools, the laws concerning shipping, the limitation of hours of labor, government banks, a public chemist, and a State geological survey. Finally, he said: "It is the proud peculiarity of this Republic that labor is honorable in all. It has been so from the beginning; it will so continue to the end of the Republic. It is a product of our free and equal condition; it is the essential guardian of that condition. It has been so

from the condition of the emigrant fathers, from the condition of the country they subdued, from the age of the world in which they lived, from the religious ideas which imbued them, from the political institutions which spring from those ideas and in return fostered them by their protection. American Republicanism does not look on labor as a necessity; it imposes it as a duty, and, therefore, it is honorable in all, and idleness is not honorable in any. Yet we are least of all people guilty of the folly of leveling all pursuits. We do not honor less the smaller; we only honor the greater triumph more."

During these years of practice at the bar Davis did not neglect the study of languages and literature. His friend Creswell<sup>26</sup> said that "his habit was not only to read, but to re-read the best of his books frequently, and he was continually supplying himself with better editions of his favorites. In current playful conversation with his friends he quoted right and left, in brief and at length, from the classics, ancient and modern, and from the drama, tragic and comic. He was the best scholar I ever met, for his years and active life, and was surpassed by very few, excepting mere bookworms." As a result of the training of these years, Davis entered public life "possessed of a mind of remarkable

power, scope and activity; with an immense fund of precious information, ready to respond to any call he might make upon it, however sudden; wielding a system of logic formed in the severest school and tried by long practice; gifted with a rare command of language and an eloquence well-nigh superhuman, and withal graced with manners the most accomplished and refined, and a person unusually handsome, graceful and attractive."

## NOTES ON CHAPTER IV.

1. Creswell, Speeches and Addresses, XIX.
2. Creswell, Speeches and Addresses, XX.
3. Vide "Portrait of Henry Winter Davis, Esq., by his own hand, and "A Review of Mr. Davis and Free Soilism." In 1855 he is said to have claimed that these letters were his contributions toward maintaining the peace of the country against secessionists.
4. H. W. Scott's "Great American Lawyers." A slight sketch of Davis, with portrait, occupies pages 283-290.
5. This pamphlet, which caused Davis's opponents in 1855 to taunt him as a "lawyer with pompous pretensions to the character of a theologian," is entitled "A Epistle Congratulatory to the Bishops of the Episcopal Court at Canada by Ulric von Hutten, New York, 1853, page 74, and is dated on the Feast of Alcantara."
6. Speeches and Addresses, XXIX—John A. J. Creswell, (1828-1891) was a member of the Thirty-eighth Congress, United States Senator from Maryland from 1865 to 1867, Postmaster-General 1869-1874, and member of the Alabama Claims Commission 1874-1876.
7. Speeches and Addresses, XXXIII.
8. Capt. Henry P. Goddard, in an informing article on Davis, which appeared in the Baltimore *Sunday Herald* of

March 8, 1903, on the authority of William F. Frick, Esq., at that time the last survivor of the Club, names as the members of the Club, in addition to Messrs. Frick and Davis: Severn Teackle Wallis, Judge George William Brown, C. H. Pitts, Thomas Donaldson and F. W. Brune.

9. By Isaac Brooks to Capt. H. P. Goddard, and repeated in the Baltimore *Sunday Herald* of March 8, 1903.

10. Capt. H. P. Goddard, in the Baltimore *Sunday Herald* of March 8, 1903.

11. Steiner's Johnson, 4. Curiously, the only comment I have found by Johnson upon Davis is a reference in a speech made in the Senate in 1866 to him as "eminent as a lawyer, as well as a politician, and, in my judgment, more often wrong in the latter capacity than he was in the former." (Steiner's Johnson, 139.)

12. 10 Cent. L. J., 106, speaks of his boldness.

13. "Portrait of Davis by his own hand."

14. Rhodes, U. S. vol. I, 270.

15. Clayton Papers, in Library of Congress.

16. Printed in Baltimore, it is an octavo of 450 pages.

17. On the title page he placed the quotation:

"Litora litoribus contraria, fluctibus undas,  
Imprecor, arma armis, pugnent ipsique nepotesque."

18. Page 12.

19. Page 23.

20. Page 25.

21. Page 26.

22. Page 218.

23. Page 276.

24. Page 327.

25. Page 333.

26. Speeches and Addresses. XXII.

## CHAPTER V.

THE THIRTY-THIRD CONGRESS  
(1855-57).

The rapid influx of immigrants, after the potato famine in Ireland and the failure of the revolutionary movements in Germany, alarmed many persons in the United States and led to the formation of the Know Nothing, or Native American party. Maryland had always shown nativist leanings and was a conservative State, in which the Whigs had been strong. When that party broke up, its members feared the anti-slavery proclivities of the Republican party and coalesced with the Americans, giving the union such strength that in 1856 Maryland was the only State to cast her vote for Fillmore, the Whig and American candidate. When Davis was in Europe, in the summer<sup>1</sup> of 1854, the American party was organized in Baltimore, and that autumn it carried the city in a quiet election. With many another Whig, Davis joined the Know Nothings and took a prominent part in the party councils. He wrote a pamphlet, defending its position, which pamphlet was published under the title of "The Origin, Principles and Purposes of the American Party," and defined that party as "the associa-



tion of American Republicans to vindicate the fundamental principles of the Republic, sacrificed by worn-out parties to personal and factional ambition." This "revolt, veiled in secrecy," was opposed by "fanatics of freedom and fanatics of slavery, disorganizers and disunionists both." The party's platform included the exclusion of religion from political influence, freedom of schools from sectarianism, and the protection of the "purity of elections against the influence of venal, foreign immigrants." The old issues were dead. The people support the tariff of 1846. The struggle as to implied power had ended in a compromise. The bank and internal improvements are no longer issues. The people revolt against parties. The Nebraska and the Homestead bills are to be opposed. "American Republicans alone are entitled to rule the American Republic. The great mass of European emigrants are unfit recipients of American citizenship, without a longer and more thorough probation." Too many of the enslaved millions were coming to our shores. "By our American law, office is the right of no one. It is not a property, but a trust. No person, but one of American birth, shall be trusted with American affairs." The State should be neutral in religion, avoiding Mormon and Papist influence. The Roman Catholics in

Maryland had deserted the Whig party to vote for Lowe, the successful Democratic candidate for Governor, because he was one of their faith. American Roman Catholics, however, "with American principles in their bosoms, are not to be confounded with the Ultramontanes in Europe. The Federal Constitution makes the Union neutral as to slavery in the States, and the new party tolerated no agitation of that "local subject." They supported the fugitive slave law, and did not favor the repeal of the Kansas bill; "for, to open the question, renews the terrible collision of opposing passions." Kansas may decide as to the establishment of slavery in its first State Constitution. The veto power of the President is feared, as he forms no part of the Legislature and should not influence the nature of the laws, but should veto those acts only which appear to him unconstitutional. The new party recognized "no absolute or ultimate sovereignty anywhere, but in the mass of the people of every country." The party's foreign policy was one of "peace and avoidance of entanglement," though the existence of European colonies on our Southern borders was viewed with disgust.

Davis's political activity led to his nomination and election to Congress in the autumn of 1855. His previous career and his speech at

the Assembly Rooms, on Hanover street, when he accepted the nomination, were bitterly attacked during the campaign in a series of pamphlets. He was elected by a vote of 7,988, as against 7,493 for his opponent, Henry May. Nine years later<sup>3</sup> Davis told the House of Representatives that this election was the "first open struggle for power between the Know Nothings and the Democrats, who" organized banded bodies of armed ruffians and bullies, who at nearly every poll in the City of Baltimore, at the municipal elections, made deliberate assaults on the people there assembled and numbers of persons were wounded. They carried by a small vote that election. In the two weeks before the Congressional election, the "young mechanics of Baltimore, the heart and sinew of the Republic, and without whom the nation would be nothing," organized themselves with arms and said: "We will vote, if it is to be a vote, and fight, if it is to be a fight." Again the Irish and Democrats, "armed with United States weapons, took the offensive, but failed at the polls, and the result was that we carried the day by a small majority on a very full vote, and nobody was fool enough to come here, after having appealed to arms as well as votes, and been defeated, and attempt to impeach the election."

Davis was sworn in as a member of the

Thirty-fifth Congress on December 3, 1855, and found the House beginning a long struggle for the Speakership. No party had a majority in the House, and no two parties would unite. Davis's prominence is shown by the fact that he received occasional votes for the office of Speaker, although a new member.<sup>4</sup> He voted with his associate from Baltimore, J. Morrison Harris,<sup>4a</sup> for various Know Nothings.<sup>5</sup> As the long struggle dragged on, Zollicoffer,<sup>5a</sup> of Tennessee, moved, on January 11, 1856, that it be considered the duty of all candidates fully to state their opinions on important public problems. Davis concurred in this view and made his first speech, in which he maintained that the American candidate, Fuller,<sup>5b</sup> had answered "a series of sharp and pressing interrogatories," and the other candidates—Richardson<sup>5c</sup> for the Democrats, and Banks<sup>5d</sup> for the Republicans—should do the same. Yet these men had refused to say how they would organize the committees if elected. Davis "would vote for any gentleman into whose hands I believe the interests, the dignity and the honor of the country would be safe." He continued to vote for Fuller until the end, opposing on February 1 an election by plurality. On the next day, when Banks was elected Speaker over Aiken,<sup>5e</sup> for whom the Democrats then voted, Davis and Cullen,<sup>5f</sup>

of Delaware, were the only representatives from slave States who did not vote for Aiken.<sup>6</sup> Although Davis thus showed that he was not in complete sympathy with the South, even he voted against the expulsion of Preston Brooks for assaulting Sumner, and withheld his vote as to the censure of Keith.<sup>7</sup> When the committee appointments were announced, Davis was placed on the Ways and Means Committee, and continued as a member thereof until 1861. He sprang into prominence in March by his speeches on the Kansas election. On March 12<sup>8</sup> he made the first of those orations which led James G. Blaine, then the young editor of the *Kennebec Journal*, in Augusta, Maine, to write<sup>9</sup> that "Davis is the most eloquent and promising member of his party in the House," and to entertain for Davis an admiration which did not lessen with the years.

When the Committee on Elections asked authority to send for persons and papers to investigate alleged violations of peace in Kansas, Davis made "observations on the question," saying that "with criminations and re-criminations of adverse partisans I do not meddle." He would have favored action looking toward the impeachment of Governor Reeder, or a general investigation of maladministration in Kansas. The people of Maryland had "no tender susceptibilities connected

with this subject, and have neither formed emigrant aid societies, nor invaded a Territory." "Resting, as Maryland does, centrally between two sections of this country, honestly and devotedly bound up in the Constitution of this country, she is ready, freely and fairly, to investigate grievances alleged either by the North or by the South in respect to any Territory, how far soever it be toward the setting sun." He feared no "grave civil complications from the organization" of Kansas, and thought the cloud was "a wind cloud—boisterous, disturbing, casting the dust in men's eyes, but not charged with any lightning likely to strike any one of the towers of the Republic and having none of the portentous stillness which marks the coming earthquake which can shake its foundations." The Elections Committee differed as to whether evidence should be taken by calling witnesses before the committee, or whether a commission should be sent to Kansas to take evidence; but Davis said that the real point was, whether there were facts which can weigh a feather in this matter. There was no foundation for an investigation by parol testimony. The Democrats wrongly argued that no court could inquire into the legality of the organization of the Kansas Legislature which passed the Act under which Whitfield claimed the election to

a seat in the House, and that, therefore, the House itself could make no such inquiry. "The constitution of the Legislature is a thing that never has been and never can, properly, be a matter of judicial investigation," for "all judicial functions proceed upon the assumption that there is a Legislature in existence." An election to a seat in the House "lies within the circle of the political functions of the State," and "must be decided, before any question can be decided by the judiciary." "The very existence of the government," Davis continued, "rests upon the postulate that, for every difference about political conduct, there is a final arbiter, whose decision is absolute, binding on everybody and all questions." We must, then, go to the law and see where the right to decide this question is vested, both in case of an ordinary election and of a revolution. The "extent of violence and mode of fraud" do not change matters. "There is no gentleman in this House for whom illegal votes were not cast. There has been no Legislature elected in our history where there has not been more or less violence at the polls." By the Kansas-Nebraska Act the whole control of the election was delegated to the Governor, and, therefore, the Legislature approved by him was a valid one. In deciding between two rival Territorial governments,

the House must go "behind the law, to the authority which the body has assumed to pass the law. We are in search, not of the law, but of the foundation of the law. The President must determine exclusively. Upon his judgment—sandy as the foundation may be, aghast as we may stand at the frail vessel in which this awful power is now deposited—rests the sanction of every power, the authority of every law, the enforcement of every precept, and everything which rescues that Territory from the control of the Indian and converts it into the domain of civil society." Pierce had acted. The House can not inquire collaterally into the validity of the territorial laws of Kansas. Kansas has been invaded from both North and South, and Davis must support the President, since the people of Kansas "were wanting to themselves in not meeting armed intrusion by armed resistance."<sup>10</sup>

At the evening session of the House on August 7, 1856, when it was in committee of the whole on the state of the Union,<sup>11</sup> Davis delivered an eloquent address upon the coming Presidential election. Fillmore had been nominated by the remnant of the Whigs and by the Americans, and Davis earnestly advocated his election as a national candidate over Fremont and Buchanan, who had been nomi-



nated by the Republican and Democratic parties, respectively. Davis regarded both of these parties as sectional ones, and in sentences replete with his knowledge of Shakespeare and the Bible, with allusions to classic mythology, ancient history, and Cooper's novels, he urged that neither of them should be given the victory. His dramatic power was clearly shown in this speech, and its hot sentences still thrill the reader. He maintained that "the Democratic party rests itself on its boasted and self-arrogated privilege of supporting and sustaining the peculiar institution of the South. Its strength, and its whole strength, consists in its assertion that it alone is the defender of Southern rights. It is, therefore, dangerous for anything to arise within the limits of the South and claim a hearing from the Southern people, which touches more nearly the rights of the people, and appeals to the more elevated and noble sentiments of devotion to the Constitution and the Union. The gentlemen of the Republican party of the North aspire to represent that sentiment which is likewise local and peculiarly confined to the boundary of the North, and having no power beyond it. They are strictly sectional parties, tending to bring into collision hostile opinions, feelings and interests concentrated without mixture at the opposite poles of the

country—each intensified, like opposite electricities, by the intensity of the other, and threatening, if brought into contact, an explosion that may shake the foundations of the Republic.” On the other hand, the American party is national, and Fillmore’s “truth to the Union is made the reason why Southern gentlemen, for whom he ran the greatest risk against the opinion of his own region of the country, are to turn against him.” The North has not been guilty of any act of State Legislature or Governor, “which, in the slightest degree, has sullied the honor or injured the interest of the South.” “There is hostility at the North,” but it is toward the Democratic party, who vainly are claiming that the South is the object of this hostility. At the last Congressional election, a “stubborn resolution” was manifested at the North. “No event had since transpired to show that the Democrats had even a plurality of the votes in any State north of Mason and Dixon’s Line. The causes of this hostility were” the repeal of the Missouri Compromise, the enactment of the Kansas-Nebraska Act, and the outrages in the Territory of Kansas, denied or defended by the Democrats. As late as 1845, in the Texas resolution, the Democrats had recognized the Missouri Compromise, and Buchanan had voted for that resolution. The compromise of

1850 brought peace for a time and the decline of the Abolitionists. That compromise was due to the efforts of Fillmore, "leading the conservative men of all parties." Then came the Kansas-Nebraska bill, "an invitation for all the elements of strife to concentrate in Kansas," and Pierce made the conditions there worse by sending an incompetent Governor<sup>12</sup> into the Territory. The Northern people will not vote for the Democratic nominees because "they have blazoned on their banner the very words of the ambiguous oracle" of the Kansas-Nebraska Act, "plainly and in bloody letters, interpreted on the field of Kansas."

Davis spoke "for the Constitution and the Union," and was "pleading for the great rights of American citizens" and "for the honor and integrity of the American government." He and his fellows of the American party had been attacked bitterly by the Democrats, and now the attempt was made to force them to vote for the Democratic candidate "because of our connection with the South." "So paramount do they regard the allegiance to the sectional candidate, that they ask us to sacrifice our personal preferences, our political connections, our outraged dignity, for *their* triumph." He refused to do this. "The repudiation of the Democratic party is the first condition and best security for peace and

safety. It silences the plea of revenge and retaliation. The people of the South owe it to themselves and to their future as completely to discard the Democrats as the people of the North have withdrawn from them their confidence." The threat of secession had been made, in case of Fremont's election, and Davis considered it "portentous to hear the members of a party contesting for the Presidency menace dissolution and revolution as the penalty they will inflict on the victor for defeating them. People who do not hold the Union worth four years' deprivation of office are scarcely safe depositories of its powers." He felt convinced that the Union would not be dissolved, "until some party bent upon acquiring party power" shall "exasperate, beyond the reach of reason, Northern and Southern minds, as my Southern friends have now exasperated the Northern minds. It would be an act of suicide, and sane men do not commit suicide. The act itself is insanity. It will be done, if ever, in a tempest of fury and madness which cannot stop to reason. Dissolution means death—the suicide of liberty without the hope of resurrection." The division of territory of the Republic would leave a "sharp and jagged chasm, rending the hearts of great Commonwealths, lacerated and smeared with fraternal blood."

However the election may result, Maryland "knows but one country, and that the Union. Her glory is in it; her rights are bound up in it. Her children shed their blood for it, and they will do it again. Beyond it, she knows nothing. She does not reckon whether there is more advantage in the Union to the North or to the South; she does not calculate its value; nor does she cast up an account of profit and loss on the blood of her children." Because Fillmore "knows not where the South ends or the North begins," Davis would follow him and summon all men to join him, in the name of the Union Fillmore saved in 1850.

Late in the session (August 13), when Pennington,<sup>13a</sup> of New Jersey, moved that no money appropriated for Kansas be paid until every person charged with treason in connection with the Topeka Constitution, be released from confinement, and Grow,<sup>13b</sup> of Pennsylvania, argued that no prosecution of such persons ought to be begun, Davis said that he felt that the prosecutions ought not to proceed, that a charge of constructive treason is a scandal, and that the House had the right to arrest appropriations in the case of revolutionary necessity. That point had not yet been reached, and Pennington's proposal was, therefore, not proper, but childish. The Administration had tried the country till it was

at the verge of civil war, and is now seemingly about to set free the victims of months of imprisonment. The "pressure of the Presidential contest, the necessity of party power, have driven the Administration to arrest a course of misrule, which they have hitherto denied to be misrule, which the ambition of party power initiated, but which now threatened those who began it." These prosecutions furnish ground for impeachment, their continuance is a "grave offence," their "final dismissal is a confession of the original error."

National politics again appeared in discussing the question of suffrage<sup>14</sup> in the City of Washington, when Davis defended the proposal that, after naturalization, a foreigner should wait for a year to obtain voting privileges, as a person did who moves to that city from another State. When he has resided "as a citizen for a year" in the city and has had his attention directed to the "municipal concerns," when he is "under the influence of those obligations of citizenship," then he may "vote wisely upon the rights and interests of citizens around him." The "practical operation of allowing foreigners to vote, without these qualifications," is that, on the "day before the election, the courthouse is crowded with files of foreigners to take out their papers, and the next day they go to the polls to

turn the balance against men, native and foreign, who have been here ten or twenty years. Men do this who know nothing of the interest of the country, men who have never had their attention turned towards any of the great duties of American citizenship, men who have so little interest in becoming citizens that they do not, in nine cases out of ten, pay the fees for their own naturalization papers; men who in nine cases out of ten do not seek the courthouse of their own accord to get their naturalization papers; men who are raked up in our cities and marched and dragged along before the tribunals of the United States by men who stand by them to pay the fees of naturalization out of their own pockets; men whose papers are not even confided to their own keeping, but are kept by politicians in their own possession until they are marched up in files to the polls on the day of election." No party would naturalize men if they could not vote for a year. The five years a foreigner spends before naturalization form no equivalent for the twenty-one years of minority of natives. "Men who have grown up under despotic governments have learned to obey authority from fear and, therefore, they look upon authority not as a power of which they are a part, but as their natural enemy." In Baltimore the United States Court sat on

election day, so that naturalized voters, made after the sun had risen, should vote before it went down. They were no fit arbiters of the affairs of the State. The Washington City authorities did not favor the proposed law,<sup>15</sup> and sent Davis a remonstrance, which he presented to the House. The bill said that if the election judges *knowingly* refused to receive the vote of a legal voter, they are guilty of crime. Davis opposed this provision, since neither in Maryland nor in Virginia is an election judge held responsible for drawing a wrong conclusion from facts, but only for the exercise of his judgment. The word *corruptly*, or an equivalent, should be inserted, if the act is to be considered a crime. "It is not the habit," he continued, "of this part of the country to appoint judicial officers and then hold them to the performance of their duties by penalties." The law was devised to revolutionize the city, after the defeat of the Administration in the local elections. Warming to his theme, Davis continued his denunciation of the Democratic party. In "Baltimore, where from time immemorial" they "have made election after election one unbroken scene of violence, denunciations, riot, bullying and bloodshed," they "were taught a lesson last fall which they are not likely to forget." Their success in 1852 had disturbed the



nation. "It was they who made the peaceful night horrid with their clank of the fire bell, before whose sound the prophetic mind of Jefferson trembled. It was they who, without one petition, without any popular demand, without any political necessity, without the excuse of any practical good hoped for or pretended, to the dismay of the peaceful millions of the North, with views of party ambition, rekindled the smoldering and dying embers of the slavery war and committed the nation to the strife of fierce factions, of which they are most dangerous." They call themselves saviours of the Union, but they are rather "the evil genii of the Union, who first stirred those subterranean fires whence came that earthquake which lately rocked its deep foundations." <sup>16</sup>

When the publication, at the nation's expense, of the papers of the transcontinental exploring expeditions was proposed, Davis objected <sup>18</sup> to the publication by the Federal government of picture books, or of stories of interesting travels, as unconstitutional, nor would he print incompleated reports, nor books on elegant paper with superb topography, in an expensive quarto form. He was willing, however, to vote for the printing of such a scientific work as a "geographical reconnoissance of the unexplored territory of the gov-

ernment.” He advocated the establishment of a government printing office, instead of doing printing by contract. He favored a trans-continental road for military purposes, and held that, if it was right to build it, it was also right to make surveys for it and to publish those surveys. “I think that the Government of the United States has the right to make a road wherever it has the right to send a soldier, or to send a mail bag. I think it is folly to make roads where roads are already made, but I think it would be wisdom to make them where they are not made and where they are necessary for the purpose of either military or postal transit. Whether they shall be made here or there is not, in my judgment, a question of constitutional power, but a question of expediency, with reference to the particular work and expenditure, and one which is addressed to the discretion of government.”

He favored an appropriation for a foreign minister who went from Paraguay to Uruguay on a special mission,<sup>19</sup> as he thought that the officers of the United States were not slaves of the government, so as to owe all their time thereto. An officer was bound to take so much of his time as is necessary to discharge the service which he is charged to perform, and the residue is at his own disposal. Conse-

quently, he may receive extra pay for extra services.

He was much interested in the appropriation bills. He opposed <sup>20</sup> an appropriation for the Washington Aqueduct, as he objected to making local improvements with funds from the public treasury, though he was willing to pay the National Government's fair proportion for introducing water. Three-fourths of the work was in Maryland, and Davis doubted if the United States possessed the right of eminent domain there. If Congress can appropriate for such a purpose as the Aqueduct, why can it not also do so for the improvement of rivers and harbors? Feeling that there has been a "laxity in the conduct of the executive department," <sup>21</sup> running, it may be, through several administrations, which requires to be called to the attention of the country," Davis insisted that an appropriation should be definite in amount. "Ambiguous language is not to be construed in favor of taking money from the treasury." The creation of an obligation is one thing, and provision of funds to pay for it is another. 'The deficiency bill should not contain appropriations for expenditures of the preceding year, because the Secretary of War has applied this year's appropriation to pay them. If he may do this, he may also double the military establishment, and the Executive

is emancipated from the control of the Legislature. Davis advocated a conference committee on the Deficiency bill, though he thought that the Senate abused its privileges by sending back to the House fifty amendments to that bill which should have been in other bills. He felt that he had called the attention of the country to abuses, and could afford to waive his opposition, especially since Mr. Joseph Lane had told them of the "inexorable necessity" which existed for the protection of the lives of the people of Oregon.

Davis advocated the payment of Ohioans who aided in the execution of the fugitiveslave law, as it was wrong not to appropriate money needed to carry out any law, and he praised the Bostonians who helped to seize a fugitive slave. A colloquy, in excellent temper, followed with Joshua S. Giddings, the anti-slavery representative of the Western Reserve. In the course of it, Davis said that Jefferson was the higher law man of his day, and in the Alien Act showed himself an unsafe guide in construing the Constitution and in administering the law. The higher law doctrine, "like noxious weeds, grows from year to year." Fillmore is to be praised, because he did not shrink from executing laws. The Abolitionists are not the only partisans of the higher law, for the "strict construction, secession gen-

tlemen, who only meant to apply the dogma in extreme cases, of which they are to be the judges, stand upon the platform of Giddings.”<sup>24</sup>

Baltimore politics were very turbulent in 1856. Eight years later<sup>25</sup> Davis told the House of Representatives that the Democrats, “furious” at his election, “organized for the elections of 1856. The great Irish ward was a vast arsenal, and men marched forth in battle array and fired deliberately volleys into peaceful crowds at a neighboring precinct. Instantly it was replied to. But the Irishmen could not meet the young American mechanics, and again the Democrats mourned defeat, while we grieved over our friends treacherously slain. We had either to be driven from the polls or fight, and our young men preferred the latter alternative.”

In the second session of this Congress Davis’s chief activity was in connection with an investigation of charges of corruption against certain members. He supported a bill for their punishment,<sup>26</sup> containing a section providing that any person testifying upon the subject before the investigating committee should be free from prosecution, which provision he believed to be in accordance with the Common Law both of England and the United States, and he reported for the com-

mittee, moving the expulsion of two of the inculpatcd persons.<sup>27</sup>

When the votes for President were counted, Davis said<sup>28</sup> "the only purpose of assembling here is to identify the things which are sent here as votes. The act is a ministerial and not a judicial one. "Until the House has a motion before it to proceed to the election of a President, their act is extra judicial." The Constitution does not "ask judgment by anyone on a mere count, and does not say that any one shall be declared President; but, merely, that the votes shall be counted, and he who has a majority shall be President, not declared President, for the law declares him. When called on to elect a President, we settle that result that there is an election, by refusing to go on and perform that duty."

He had previously expressed himself with great force on the teachings of the late election, in a speech delivered in the House on January 6.<sup>29</sup> The President's message was under discussion, and Davis maintained that Pierce's words therein had given rise to the fierce debate on the meaning of the Presidential election, in which the House was engaged. Davis vehemently attacked that "extraordinary document," which showed the bitterness of a spirit "broken by such a fall." He especially objected to Pierce's statement that, as

Senators represent their respective States and Congressmen their constituents, so "the President represents the aggregate population of the United States." Pierce's statement is one of "sinister import," assigning "our lower sphere, where we should not behave unseemly." If it be true, however, then Buchanan, who received a minority of the popular vote, "misrepresents the people." In summing up the lessons of the election in his message, Pierce had departed "from the severe courtesy, the respectful reserve, the passionless dignity, observed by his predecessors in alluding to the conduct of sovereign States, or the motives of great bodies of the people in the highest function of their sovereignty;" had "forgotten the President in the partisan, and inflamed the passions already consuming the vitals of the Republic." The election had not only proved that a minority of the people desired Buchanan as President, favored the Kansas-Nebraska Act and approved of Pierce's administration; but also that this minority "was so located, in various States, that under the Constitution it could cast a majority of the votes of the Electoral College." The election also demonstrated that the "blast which prostrated" the friends of the Kansas-Nebraska Act at the "North was no passing squall; that no sober second thought had changed their

first thought; but that a settled and unchangeable hostility through all the North condemns them to a hopeless and pitiable minority." The Democratic party had been really condemned. "The great majority of the country are tired of its men, are hostile to its principles, condemn its measures, mock at its blunders, are weary of its agitations, abhor its sectional warfare and have ordered a hue and cry to be made against everything bearing the name of Democrat, as disturber of the public peace." That party, whose "domination in the Executive chair" will continue, because people "were so unfortunate as to differ as to the measure of redress," has long been divided on the questions of protection and internal improvement, and now, on the question of slavery, has become widely divided "upon exactly the same question of constitutional power that rests at the bottom of the words of the Kansas-Nebraska Act." The language of this Act, as Alexander H. Stephens had just said, conferred by grant "upon the people of the Territories all the legislative powers that Congress can confer." The dispute was as to whether these people can exercise their legislative power concerning slavery now," in their Territorial condition." This dispute was not a "mere difference of interpretation," but a "radical, inherent, profound difference" as to



Congressional power, "splitting them from top to bottom." On this question, as to whether the Act ought to have been passed, the election of an anti-Kansas Act majority of the House in 1854 gave the answer of the whole North, but the North entered on a contest "of reprisal and retaliation, revenge and conquest, not defense and restoration." Southern Democrats claimed the "law as a great Southern triumph, not merely in point of principle, but in point of policy and fact, as opening a hitherto barred territory to slavery and giving a chance for another slave State to restore the disturbed equilibrium of the Union." On the other hand, Northern Democrats argued: "It is the best measure for freedom, it breaks down all the compromises; it leaves the question open; it confers legislative power upon the people of the Territory. You will never hear of another slave State; we will make Kansas a free State; and, therefore, we are willing to abide by the principles of the Kansas-Nebraska Act, because, although it ought not to have been passed, it perhaps will do no harm." So arguing, they even printed on handbills: "Buchanan, Breckenridge, and Free Kansas." Davis believed that it touched the "dignity of the South more" to have the slavery question settled by the rude backwoodsman," under the doctrine of squatter

sovereignty, than in Congress in "solemn consultation," where partition might be made, so that peace should reign. He still favored compromise and eulogized the "very purpose and principle of the Act of 1820," which "were to vindicate the equality of States and the right of the people to form their own constitution without control." In advocating that compromise, William Pinkney's "words of glory, vindicating the absolute equality of the States against the usurpation of the United States, form the fit prelude to that equal argument of the man of Massachusetts who, ten years after, maintained the supremacy of the United States against the encroachments of the States. On those cyclopean foundations have we rested, and still unshaken rest, those two pillars of the Constitution, the absolute and inalienable equality of the States in their sovereign function, and the equally absolute supremacy of the United States within the sphere of their conceded powers." Davis thought the Kansas Act an "electioneering manœuvre" which had "secured neither a territory, nor a State, nor a constitutional principle, nor peace" to the South, but had reopened a "dangerous agitation" and divided the Democrats. Their party was no longer a "homogeneous body," and it won the Presidential election, because it

obtained the votes of the "foreign recruits in Pennsylvania."

The election had also shown that the Republicans could not win. The people "will not sanction a merely sectional canvass for the Presidency, nor intrust with the government a party whose whole power is confined to one-half the States, whatever their purposes may be. They will not sanction retaliation as the spirit in which wrong is to be repressed. They think that the evils of civil war are greater than the evils of another slave Territory, and the policy of the Republican party, while it did not justify, did tend to kindle war." The success of that party would have involved the "exclusion of every Southern gentleman from office," and one-half of the people would have had no voice in the government. Davis held that "the condition on which alone any party can fitly be entrusted with the government is the possession of power and friends enough, everywhere, to carry on the government with the men of the State to be governed, so that a domestic government shall not assume the form of foreign domination. Instruments of any power may always everywhere be found; but the office, in such hands, partakes of the nature of despotism, and such men alone were at the disposal of the Republican party in one-half the States of the Union." The Republi-

can party was a hasty levy, *en masse*, of the Northern people," and "has no future," but must pass away with its occasion. From both Democratic and Republican parties "the eye of the country turns with hope" to "the ranks of the American party, thinned by desertions, but still unshaken." That party "alone is free from sectional affiliations at either end of the Union, which would cripple it at the other. Its principle is silence, peace and compromise. It abides by the existing law. It allows no agitation. It maintains the present condition of affairs. It asks no change in any Territory, and it will countenance no agitation for the aggrandizement of any section." Its "high mission" was "to exclude appeals to foreign birth, or religious feeling, as elements of power in politics, to silence the voice of sectional strife—not by joining either, but by recalling the people from a profitless controversy." The "sound position of the American party" was to hold "silence on the slavery agitation. Leave the Territories as they are—to the operation of natural causes. Prevent aggression by excluding from power the aggressors. Awake the national spirit to the danger and degradation of having the balance of power held by foreigners."

Shortly before the Congress adjourned Davis was married a second time, on January

26, 1857, to Miss Nancy Morris, daughter of John B. Morris, Esq., of Baltimore, who survived him with two daughters.<sup>30</sup> In the early part of his married life he spent a winter in the household of his father-in-law. He was rather a quiet man in his home, not speaking frequently, but occasionally pouring forth long speeches in eloquent form; not smiling often, but breaking forth in a sudden laugh, when something appealed to him as amusing.

#### NOTES TO CHAPTER V.

1. Speech of May 9, 1864.

2. In the newspapers there was some correspondence between him and Mr. Henry May, his Democratic opponent. At least three pamphlets appeared against Davis. 1, "Portrait of Henry Winter Davis, Esq., by his own hand," which said that "his political inconsistencies were daguerretyped in colors warranted not to fade, as his principles have always done under the corroding touch of time," and that in the *American Sentinel* of October 22, 1855, Davis had asserted the unconstitutionality of the Ordinance of 1787; 2, "A Review of Mr. Henry Winter Davis and Free Soilism," which asserted that at the table he always took the Free Soil side; and 3, "Read and Judge for Yourself: A Review of the Pamphlet of Henry Winter Davis," i. e., the Origin, etc., of the American Party.

3. On May 9, 1864.

4. E. J. Walker, of Alabama, voted for him on December 4, and W. R. Smith on December 6.

4a. Harris (1821-1898) was member of Congress from 1855 to 1861. He was the reform candidate for Governor in 1876, and was a scholarly lawyer and a high-toned, courteous, Christian gentleman of the old school.

5. E. G. December 3 for Marshall, December 4 for Walker, Lake and Valk, December 6 for Wheeler.

- 5a. Felix M. Zollicoffer, of Tennessee (1812-1862).
- 5b. Thomas J. D. Fuller, of Maine (1808-1876).
- 5c. William A. Richardson, of Illinois (1811-1875).
- 5d. Nathaniel P. Banks, of Massachusetts (1816-1894).
- 5e. William Aiken, of South Carolina (1806-1887).
- 5f. Elisha D. Cullen (1799-1862).
- 6. Vide I, Blaine, Twenty Years, 122.
- 7. 3 Pierce's Sumner, 489. Lawrence M. Keith, of South Carolina (1824-1864).
- 8. On February 28 he had favored a grant of an addition to the salary of the Governor of New Mexico, as he had acted as Superintendent of Indian Affairs. On the same day he introduced bills for the improvement of the Patapsco and for connecting it with the Susquehanna.
- 9. Gail Hamilton's Blaine, 112.
- 10. On April 29 he opposed postponement of a Nebraskan contested election case.
- 11. Speeches and Addresses, 39.
- 12. Andrew Horatio Reeder (1807-1864).
- 13. On August 13.
- 13a. William S. Pennington (1796-1862).
- 13b. Galusha A. Grow (1827-1907).
- 14. On March 25.
- 15. On May 14 and 15.
- 16. Howell Cobb answered this speech.
- 17. On April 2.
- 18. On April 1 he had opposed the purchase of Alden's Index to the Supreme Court Reports.
- 19. On April 11.
- 20. On April 14.
- 21. On April 25.
- 22. On April 29.

23. On May 9.

24. On August 7, under instructions from the Committee on Ways and Means, he offered an amendment to the Civil Appropriation Bill, appropriating \$200,000 for a United States Court House in Baltimore, expecting later to provide for a separate Post Office building. On the 8th he opposed, as improvident, Bowie's proposition to appropriate \$267,000 for the purchase of the Merchants' Exchange in Baltimore for government uses.

25. On May 9, 1864.

26. On January 21 and 22.

27. On February 11, 25, 27, 28. On February 24 he advocated relieving persons who had suffered in a fire when their goods were in bond.

28. On February 11.

29. Speeches and Addresses, 63.

30. Speeches and Addresses, XXI. Mrs. Davis died in 1902. One daughter died young.

## CHAPTER VI.

THE THIRTY-FOURTH CONGRESS  
(1857-59).

In the autumn of 1857 a Governor of Maryland was chosen. Seven years later, on the floor of the House of Representatives,<sup>1</sup> Davis thus spoke of the fall campaign: "The Americans, having got possession of power, did what the Democrats had refused to do, organized the police and armed it, for we did not choose that, while we were in power, ruffians should make an election a question not merely of numbers, but of power. Representatives of the majesty of the law, we meant to enforce submission to it, and we organized and armed a strong police force and it accomplished its purpose and kept the peace." At the municipal election Davis claimed that "peace and quiet" reigned throughout the city, except in the Eighth ward, "where the Irish took possession of houses and armed themselves and shot at the police as they passed, and thrice marched to attack Americans at the polls, and as often they were dispersed. The police suppressed every attempt at disturbance, without hurting one of the villains who were aiming at their lives and who killed several of them."



The Gubernatorial election occurred a fortnight later. The Democratic Governor, Thomas W. Ligon,<sup>2</sup> thought, said Davis, that "nothing could defeat the Americans but the employment of organized militia," and called out six thousand men, armed with muskets borrowed from Governor Henry A. Wise, of Virginia. "Negotiations passed" to which Davis was a party and in which Thomas Swann, the Mayor, "showed indomitable firmness." Davis approved Swann's action and advised him to yield nothing. Ligon "sent enrolling officers through the streets to find men to hold Wise's muskets," but failed. Then Ligon, "disgusted at his own abortive attempt at military dictation, issued a final order" that, having secured the "object of his intervention, he would not use force, and slunk from the city which had tolerated his presence. After the negotiations had gone on all night, the broad place before the Holiday Street Theatre was packed with Swann's partisans, while Irish not far off, with clenched fists and yells, menaced them, without being able to provoke a word." One of Ligon's advisers saw that assembly over Swann's shoulder, and, going out of the back gate, told the Governor, who, after receiving that news, desisted from his efforts. The election "passed quietly as a Sabbath and the people recorded their reprobation."

tion of this illegal attempt" by electing Thomas Holliday Hicks, the American candidate, as Governor.<sup>3</sup> In the Congressional election Davis received 10,515 votes to 3,979 cast for Brooks, his opponent.<sup>4</sup> On May 9, 1864, Davis said that in the contest over this election proof had been given of only 26 illegal votes and of 40 or 50 cases of assault. Both sides contained violent men. Voters were prodded with awls at the polls, and the charge was made against Davis that he spoke at a meeting in Monument Square with a gigantic awl suspended above his head.<sup>5</sup> Davis's fearlessness is shown by an anecdote told of his campaigning. A Democratic club had sworn to mob him if he spoke at the Cross Street Market Hall. On the appointed evening, in an open carriage, wearing a full-dress suit, white gloves and a silk hat, he drove to the hall and walked through the crowd to the stage. There he stood, facing the audience, placed his hat on a table and, slowly drawing his gloves from his fingers, dropped them into the hat and then began an eloquent speech. The crowd, awed by his personality, listened intently, and as they left the hall a man was heard to say: "That's the man for my vote. He as good as said, 'damn you, I don't care for you—put that in your pipe and smoke it.'"

The party rancor of that time is shown in a

curious incident. On December 23, 1857, representatives of the Jefferson, Washington and Columbian Societies of the University of Virginia wrote to invite Davis to address them in the coming June. He accepted this invitation, writing from Washington on January 4, 1858, and regretting that he had not visited the University since he "left it for active life, seventeen years ago." The Jefferson and Washington Societies soon withdrew their invitation, but the Columbian Society wrote, on January 26, expressing regret at the action of the other societies, "which was either on account of political feelings or local prejudices," and requested Davis to deliver the address before the Columbian Society alone.

When Congress met in December, 1857, Henry P. Brooks contested Davis's right to his seat, and William Pinkney Whyte, in the other Baltimore district, contested Harris's. In both cases it was alleged that there was no fair opportunity in Baltimore to exercise the right of suffrage. The election committee reported<sup>6</sup> that it was inexpedient to grant Brooks's prayer for the appointment of a committee to take testimony at the public expense. He should be left to take testimony at his own expense, as Whyte was doing, having also been refused this desired privilege. No lawless condition prevented this course. This

report was discussed on the 16th and 17th, and was approved by a vote of 115 to 89. On the 16th Thomas F. Bowie, a Maryland Democrat, made a speech against Davis, full of sound and fury, and two days later, when Davis rose to the question of personal privilege to ask an explanation of Bowie's language, the latter retracted his words, saying that from his "inmost soul" he "abhorred the principles of the Know Nothing party," but did not "in any personal sense" refer to Davis. The contest dragged on until May 19, when the House discharged the Election Committee from further consideration of Brooks's memorial. In the following month,<sup>7</sup> similar disposition was made of the other contest from Baltimore.

At that time there were a Mayor and Council in Washington City elected by the residents. Among the voters were many temporary ones, "including possibly a thousand Government clerks, who look to leaving Washington at the end of four years," and a "swarm of laborers on the public works." Davis felt that neither of these classes could be said to be identified with the interests of the city, yet they controlled its destiny, casting from a fourth to a third of the six thousand votes. Riots had occurred at the last election, at which the Democratic candidate for Mayor

had been elected by a plurality of 26 votes, through the influence of the Federal Administration. At these riots the marines had been ordered out, and, firing on the mob, killed fourteen men and wounded twenty more. Thirty-four persons were indicted for riot by the grand jury, on which there was not a single member of the American party, while no investigation was made of the firing by the marines, whom Davis asserted the President had no right to call out, as the Marshal had not been called upon to quell the disturbance. Davis defended the accused men, who were not convicted, although tried before a petit jury, selected from a panel of whose thirty-two members only four were Know Nothings. On the floor of the House,<sup>8</sup> he attacked the Administration and denied that his party caused the riot.

His interest in local affairs was shown in his introducing a bill<sup>9</sup> for the improvement of the Patapsco River, so as to make the port of Baltimore accessible to war vessels of the United States. He gloried<sup>10</sup> that Maryland sold interest-bearing funds, borrowed money and paid interest on it, so that the War of 1812 could be carried on. Her claim was settled on equitable principles<sup>11</sup> in 1826.

In opposing the Treasury Note bill, which was making "a perpetual, irredeemable cur-

rency the very material of exchange," though the Administration had spoken against the evils of paper currency, Davis maintained that "we have now a perfectly sound paper currency throughout the country, because the banks have not broken. Merchants have broken, but the banks have not broken. The paper has not been returned to them. It is still in circulation. Now the Treasury wishes to increase the paper currency, to the extent of twenty millions, and, therefore, either inflates the currency, or substitutes the credit of the Government for it." "The Government had locked money in its vaults, through the Sub-treasury system, more than was needful, and the speculative tendencies of the country had been pushed on by the tariff policy of the administration, so that a panic occurred, which was not rapidly passing away." During this panic the Secretary of the Treasury had been guilty of a "grave financial error," in purchasing "United States stock" at a premium.<sup>12</sup> Davis supported Stanton's proposal<sup>13</sup> for investigation of the charges of bribery in connection with the passage of the tariff of 1857. He voted against all the tariff bills, and, standing "in terror of no press," said that he usually held newspaper charges in such contempt that the only notice he would take of them would be to bring

them to a grand jury. Here, however, the charge was that money was used. This may have been done legitimately, so that he wished that technicalities, delay and secrecy might be taken away in the investigation, and that a committee, sitting as commissioners, should take evidence and lay the result before the House, which could then determine whether to put the parties on trial. Davis advocated the inclusion of a clause in the Consular and Diplomatic bill,<sup>14</sup> providing that the money appropriated therein be not applied to meet expenses accruing before or after the fiscal year, so that there may be a readjustment of accounts and a review of the expediency of the appropriations every year. This limitation should not prevent appropriations for objects of permanent interest, such as buildings, but would prevent squandering and misapplication of public funds and would give Congress greater control of the Administration.<sup>15</sup>

Always interested in the proposal to build a Pacific railroad, he found authority therefor in the powers to establish post roads, to provide for the common defence, to carry on war by providing transportation for troops, where Jefferson found authority to begin the National road, where Monroe, Madison, Adams and Jackson found authority to vote for the Chesapeake and Delaware Canal, and where

Congress found authority to enter the soil of Maryland for the Washington aqueduct, to declare the great navigable waters of the West perpetual channels of commerce, to make the Wheeling bridge a post road, and to build postoffice buildings.<sup>16</sup>

When a resolution was pending to expel the delegate from Utah, inasmuch as the Territory was in open rebellion, Davis, in opposition,<sup>17</sup> said: "If there is resistance, in either a Territory or State, it is not, in the eye of the law, and cannot be a resistance of the legal authorities of the Territory and, therefore, cannot be regarded as the resistance of the Territory itself; but certain evil-disposed persons within the limits of the territory, under the guise of its authority, are resisting the laws that bind them." Such was his view of the constitutional relation of citizen to the Union. It might be an appropriate subject for inquiry, whether there be "an illegal and organized combination of evil-minded citizens who have banded themselves together to resist the authority of the United States." If any territorial officers take part in such rebellion, the President can remove them. If the delegate has countenanced an illegal combination against the Federal laws, he should be expelled; but if he is loyal, "though that rebellion should include every citizen in the



Territory except one, still he stands here as the representative of the legal rights of that one man in that Territory. Nay, sir, he stands here as the representative of the rebellious children of the Republic. He stands here to see that those who have committed treason shall be tried fairly under the Constitution and laws of the United States. He stands here to see that the laws are carried out which protect the man who has been guilty of treason from the outrage and violence which military authority visits upon political offenders." In these fiery words did he define his position, which he was forced by the logic of events to take again within a few years in a much more serious emergency.

He opposed the admission of Kansas under the Lecompton Constitution, and on March 30<sup>18</sup> addressed the House on that subject. Having previously voted against admitting Kansas as a State under the Topeka free State constitution, he felt he occupied an advantageous position in the debate. No higher proof of his ability as a constitutional lawyer can be given than his discussion of the admission of States in that speech. He began by expressing surprise that "an Administration which professes to be the godfather of "popular sovereignty" should oppose the submission of a Constitution to the popular vote; that an

Administration, which is in name Democratic, should propose to impose upon the majority the will of the minority." However, Davis saw in the movement an attempt "to prevent the Administration, which boasted itself the omnipotent pacificator, from being brought to lick the dust, now, ere the termination of the first session of its first Congress."

Davis demanded proof that the "piece of parchment" produced by the Administration contained "the will of the people of Kansas." Buchanan's followers asked that Kansas be admitted under the Lecompton Constitution, "for the sake of the principle involved." Davis asked: what was the principle? He could not accept it as a principle that 2,200 men who had voted for the members of the convention at Lecompton, should "make their will the law" over 10,000 who voted against ratifying the constitution framed there; nor that the people of a Territory had a "legal right themselves to take the initiative and lay upon your table a constitution" the acceptance of which they are entitled to demand; nor that any constitution containing "a clause sanctioning slavery" must be accepted. He would not reject the constitution because slavery was "embraced" therein. "If put there by the will of the people, it ought not to weigh with the weight of the dust in the balance upon the

question, for to allow that to be a ground of exclusion would be unwise and would exhibit an unsocial disposition," which would "lead to nothing but disastrous civil collisions."

Davis especially dissented from the position that Congress was bound to accept what the Territory had sent. They might inquire "whether there be here legal authority, whether here the ballot-box has been protected, how many stayed from the polls, or why they did so."

"All that is necessary," argued Davis, "to the admission of a State, is the concurrence of the will of the people of a Territory and of Congress. The application of a Territory to be admitted as a State is only a petition upon your table—an offer upon their part which we may accept or which we may reject at our pleasure. After that concurrence, it has been ingrafted into the living body politic of the country, bone of our bone, flesh of our flesh, to share with us for good or evil, to the end of time, the blessings or misfortunes of the Republic—to be severed by nothing except that external violence which shall lop off some living limb of the Republic," or by civil strife. With great acumen he proceeded to state that enabling acts "are only the guarantees that Congress, in its wisdom, throws around the expression of the popular will."

After the people have acted under these acts, "the will of Congress, to concur with the will of the people, is expressed in the act of Congress admitting the State, and it is that concurrence" which "alone makes the distinction between a Territory" and a State. Our Constitution knows no such thing as an "incipient State." Davis found "no intermediate condition between a Territory and a State." Whatever is covered by the jurisdiction of the United States is either a Territory or a State. He left the "dogma of sovereignty" to the "gentlemen who meddle with metaphysical disquisitions." "The word is not used in our laws; it is not found among the wise words of our Constitution. It is the will of the wisp, which they who follow will find a treacherous guide through fens and bogs." Nor would he define "popular sovereignty," that "demagogue's name for the right of the people to govern themselves—not that popular sovereignty which is limited by and springs from an act of Congress—not that mushroom growth bred in the hotbed of political corruption as a dainty delicacy for the people's palate, under the sedulous care" of the Democrats—"which, now that it is grown, is found to be nothing but toadstools, whereof the body politic is sick; but that right of the people to govern themselves, recognized by the funda-

mental law as the very corner-stone of the Republic, which, in this case, the President violates and denied." Davis intended to deal in "legal language," in which he found "such a thing as the people of the United States, of which the people of a Territory form the subjects." The Territories had no "legal right" to initiate proceedings to form a constitution." The House was not then "dealing with revolutionary, but with legal rights. We live and are born under the Constitution, and to us that is the ultimate criterion of legal rights; it is our embodiment of natural right, in a living, practical form of government; beyond it we recognize no natural right as a source of legal right, and he who can not deduce his claim of right under it, has none." There must be no confusion of a "right of law, under the Constitution, with the natural right mentioned in the Declaration of Independence, of people to alter and change their government to suit themselves." The people living in a territory must form a State government for themselves, within the geographical limits laid out for them by Congress, "the only legal authority, the only source of law for the Territories." Congress throws around these people "a legal protection," authorizes them to proceed, and gives them "the guarantees of law in their proceedings." Congress had

passed no special act authorizing a convention in Kansas, and the Kansas-Nebraska Act did not do so, for it reserved to Congress power to make two or more States out of the Territory. He discussed the manner of admission of all the States: first, those such as Vermont and Texas, which had never been Territories; second, Territories such as Ohio, in which Congress had given the Legislatures "power to make laws in all cases; and third, Territories such as Minnesota, in which, as in Kansas, Congress had extended the Legislature's power "to all rightful subjects of legislation." For both the second and third classes enabling acts had been passed, specially authorizing the call of a Constitutional Convention and providing for the details of that convention. Next he took up "Territories which have spontaneously petitioned for admission under constitutions framed without an enabling act," such as Arkansas. In all these cases Congress declared the boundaries of the State in the act admitting it, and thus established the fact that there was "no authority in her constitution prior to her admission," for "the territorial limits of a State are essential to her existence." If the territorial convention has no right to define "the territory of the State it creates," it cannot "create a State in the eye of the law at all, for Congress may destroy its

identity by taking away a half, or two-thirds, or *all* its territory." Consequently, till "final admission as a State, the constitution is not a law; it is merely a proposition." When Michigan was admitted, after framing a constitution without an enabling act, Buchanan said, in the Senate, that the passing of laws by the Legislature for the calling of a constitutional convention was an "act of usurpation." Calhoun then held that the movement "was revolutionary, as it threw off the authority of the United States over the Territory and that we are left at liberty to treat like proceedings as revolutionary and to remand her to her territorial condition, or to waive the irregularity." <sup>19</sup> Buchanan made an initial blunder in recognizing the Leecompton convention, which he ought to have ordered the military to disperse, as they had been directed to turn out the convention held at Topeka. Davis next showed that the law of the Legislature of Kansas in regard to the convention was not executed, for no census of the whole Territory was taken, as directed, before the election for members of the convention; the apportionment was made by the secretary, who was the acting Governor, and not by the Governor and secretary; and fourteen counties were not represented in the convention. If, then, there was no legal election, those who did not vote

were not "bound by it." "They were only not participating in a usurpation. The foundation for a presumption of the assent of those who stayed at home is that the law required them to be at the polls. It is the duty of the citizen to cast his vote, and if the citizen does not cast it, he is held to authorize those who do, but that cannot be, where the proceeding has no legal validity." Less than 3,000 voters here "modestly ask the powers of a State government against the votes of 10,000 and the protest of 7,000," so that it is seen that "an overwhelming majority of the people are opposed to the thing that is now sought to be forced, or foisted upon them." Yet Buchanan stated that "the way to pacify them is to subject them, permanently, to the hateful domination of the handful of men from whose hands they would have wrested the government but for the United States troops." His "policy is high treason against the right of the people to govern themselves." Since the "stronger part of the people" is against the Constitution and the President proposes to "confide the power of State government" to the "weaker party," Davis asked whether the United States troops were "to guarantee the new usurpation." He held that the passage of this law would be a "declaration of civil war," and that "free government is a farce, if



men are required to submit to usurpation such as has here been perpetrated." He feared that "the people of Kansas are not in a mood to assist at the farce. They will turn it into tragedy. Having heretofore resisted, we ought to suppose they will resist again." Congress ought not to drive them "upon revolutionary courses," but "give them the opportunity of expressing their will as to the law under which they are to live."

Later in the session,<sup>20</sup> when the Kansas situation was again under discussion, Davis favored giving the people there an opportunity to say whether or not they preferred the Le-compton Constitution. He believed that that Constitution had been framed by a majority of the people of the Territory, and while he did not object to the Constitution, he did object to forcing the people to accept it. Davis had strong State's rights ideas from having studied at the school" of Clay and Pinkney, and at the University of Virginia, and had heard "upon every Southern hustings, since as a boy I attended debates, and since as a man I have taken my humble share in them," that every new State had a right to be admitted on equal terms with every other State. This is a "fundamental principle which lies at the very basis of the Confederacy." Therefore, "no Southern gentleman can consistently vote

for" the pending bill. When John H. Reagan, of Texas, remarked that Davis was inconsistent, inasmuch as he had opposed the repeal of the Missouri Compromise, Davis replied that "The Missouri Compromise did not admit any such principle as that there could be any limitation upon the sovereign power of a State, whether with reference to slavery or any other subject. It did proceed upon the assumption that there could be a restriction upon a Territory while it remained a Territory, and no longer than it remained a Territory." Pinkney had argued that an "infant State" could not be tied up, and opposed the compromise, because he did not consider the power rested in Congress to control the question of slavery during the territorial condition. Previous to the admission of Missouri, conditions of various kinds had been put into enabling acts, but never since that time, as the debate then settled the question.<sup>21</sup> He objected to the method of adoption of the Lecompton Constitution under a law which was absolutely void, as it surpassed the authority of a territorial Legislature to call a convention. The pending bill refused to allow the people of Kansas "to gain admission to the Union, unless they concede one of the flowers of their prerogative." A Territory may be admitted by petition of a majority of the inhabitants.

If, after admission, Kansas chooses to yield its sovereign prerogative as a matter of contract, she may do so. When the bill says Kansas shall not tax United States lands, it merely sets forth a declaration that such are the public rights of the United States, operative without the assent of Kansas; but the power to tax lands in the hands of individuals is absolute and can not be limited by Congress, more than any other portion of the taxing power of the State.<sup>22</sup> Davis represented a Southern State which lost "more negroes a year by the failure to execute the Fugitive Slave law than all the other States put together—a border State, and hence, in case of serious difficulty, more directly interested than South Carolina herself, for she has a tier of patriotic States between her and any aggressor. The State of Maryland is on the frontier." Following Pinkney and in the name of Maryland, Davis solemnly protested against conceding the right of State sovereignty, "so vital to the maintenance of the interests of the South."

A week later,<sup>23</sup> he opposed the admission of Minnesota, whose Constitution admitted to the suffrage white persons of foreign birth, who had declared their intention to become citizens—because, under the Federal Constitution, a State had no right to confer this priv-

ilege. The right of suffrage affected directly all States, through the election of representatives in Congress. Therefore, foreigners were thus given power, not merely to misgovern Minnesota, but also "me and my constituents." Calhoun properly had opposed a similar provision in the Michigan Constitution. The Federal Constitution begins with the phrase, "We, the people of the United States," not the residents, which, would include slaves, but the body politic, persons who are citizens of the United States. Davis cited Taney's opinion in the Dred Scott case in support of his contention, and said that he would vote against any one who should claim a seat in the House through the votes of unnaturalized foreigners.

At the Baltimore election of 1858, as Davis told the House of Representatives six years later,<sup>24</sup> the Democrats "submitted to the inevitable. Finding that organized military force would not crush us, they organized a most infamous association, called the Reform party, whose duty it was to *lie* down what they could not fight down in open daylight. Its leaders shrank from contact with the rough crowd at the polls; they wanted an election managed like a ballroom. They went to the polls and stayed till about 10 o'clock, getting all the votes they had, and when they had run dry, by preconcerted arrangement, they withdrew

from the polls and said they were not allowed to vote, and whined about freedom of elections."

Turning aside from political affairs, on November 16, 1858, Davis addressed the graduating class at the commencement of the Eastern Female High School of Baltimore.<sup>25</sup> Yet even here he devoted his chief attention to a defense of the religious freedom of the United States, which he sharply differentiated, both from that toleration which declared the "State the patron of all the sects, whose ministers it pays and controls as a part of the machinery of government, and seeks the quiet of the State in the stagnation of opinion and the hereditary descent of creeds;" and from the ancient principle "which assumes the supremacy of the spiritual over the civil power; asserts the right of the church to define and the State to enforce the true faith; prohibits free judgment, or punishes its errors as crimes." Contrary to both of these principles is "the American principle of the *freedom* of thought, the *freedom* of religion, the *right* of every citizen to unchecked freedom in forming his religious opinions, and the deep interest of the State in securing him not only *freedom*, but the means of enlightened judgment, and the greater, deeper and holier faith in the sufficiency of every enlightened mind to read for himself in

the Word of God the will of God, whose *practice is religion.*" The American people are religious, and their governments uphold religion, but oppose sectarianism. The system of education supported by the American people is not godless, though it is unsectarian. "Everywhere the public schools attest their efforts to make freedom of thought and religion, not merely the *right*, but the habit of the nation. The State throws open the field of knowledge and declares the right of every one freely to enter and enjoy the fruits." He believed in reading the Bible in the schools, without "sectarian exposition." "All history cannot show the mass of any people ever educated by any church," and the State must assume the task. The home must assist the State in training the young, and "cultivated and pious mothers preside over the family." He was glad to see the class before him, those "future matrons of the Republic," who already showed fitness for their "high mission as prophets of patriotic inspiration to the young men of the land." He believed that woman's place was in the home, and that "when, in after years, the eye of the world shall wonder at the dazzling destinies of the Republic, culminating in splendor and triumph," they would learn "that it is not the glory of industry, or arts, or arms, but the

light which the matrons of a nation shed around its path."

In the second session of this Congress, Davis chiefly took the floor to debate military matters.<sup>26</sup> He complained that, through "the indecision of Congress and the lack of nerve and energy and independence" of the President and the Secretaries of War, the head of almost every regiment had been allowed to become an old man, incompetent to do his duty in the field. A young man with brevet rank had to be allowed to discharge this duty, and should receive the same pay. He also moved to strike out appropriations for commutation and extra rations to officers at the principal stations, holding that the Government had too many stations, consulted personal interests and favored "gentlemen of antique years." He claimed<sup>27</sup> that the Secretary of War had been guilty of "flagrant and persistent violations of law" in the Quartermaster's Department, in expending money beyond the amounts appropriated, and that nothing would restrain him but a vote of censure or impeachment.<sup>28</sup> Later in the session,<sup>29</sup> he moved to strike out an appropriation for boats used in an expedition to Paraguay, which the President had "created," incurring an expense greatly in excess of the appropriation given for that war, "which in an unguarded moment of enthusi-

asm we authorized him to wage." On the other hand, he defended the coast survey, saying that "It is not economy to stop great national works of necessity. It is economy to stop the leaks in the Commissary Department, or in the Quartermaster's Department, or the stealings in the navy yards, or the wasteful and extravagant expenditures under the name of miscellaneous; but it is not economy to stop the clearing out of our rivers and harbors, or the erection of our fortifications, or the supply of our armaments; still less is it common sense to darken our light-houses, or to arrest the survey of the coast." These are economical expenditures which pay more, in what they save, than the Government expends in accomplishing these great objects.

Davis was always opposed to the increase of slavery. About this time he wrote for the newspapers a stirring article against the re-opening of the foreign slave trade.<sup>31</sup> He felt that it was "time that the insidious advances toward this nefarious and unchristian traffic, which a large and influential party" were "making, should attract the attention of Maryland," lest the people be taken unawares. The "grand and humane" colonization policy was said to have failed; the discontinuance of the joint English and American fleet cruising off the coast of Africa to capture slave vessels was



proposed; the "English experiment of emancipation" in the West Indies was alleged to have been mistaken; men asserted "the universal unfitness of the negro for mere personal civil freedom anywhere"; the unconstitutionality of the Federal statute against the foreign slave trade was alleged; juries in the South refused to convict slave traders in the very teeth of the evidence. "The question is upon us: Is it the great Democratic bait to catch the South in 1860, or to concentrate the South for an act of rebellion? The Democratic party is now ready at the South to make the issue—repeal or rebellion. What does Maryland say?" With this query he ended this article, as full of a triumphant irony as anything he ever wrote.

Davis was active throughout 1859 in endeavoring to bring about a fusion of the Republican party in the North with the American party and with the remnant of the Southern Whigs. In pursuance of this effort, he addressed Horace Greeley an important letter, which was published in the *New York Tribune* during November, 1859.<sup>32</sup> Davis favored the nomination of Judge Edward Bates, of Missouri, for the Presidency, and endeavored to induce the Republican party to select him as a candidate for whom both Southern Whigs and Northern Republicans could vote. He

vainly hoped that the nomination might be made in the old Whig fashion, without any declaration as to legislation in reference to slavery in the Territories. He addressed a number of letters to individuals and to journals against the wisdom of the union of the forces opposed to the Democratic party on such a basis, and maintained that "all the Territories are now, by law and in fact, free, for there are slaves in none." In New Mexico alone had any legislation attempted to establish slavery, and the act there passed was void, being in conflict with the decree of Mexico abolishing slavery." If the Republicans should insist on the enactment of a law prohibiting slavery in the Territories as "a cardinal point of policy in the canvass of 1860," they would lose the substance for the shadow" and would fail to accomplish anything. On the other hand, the election of a President, "holding the views of Mr. Clay" as to slavery, "and in character above the necessity of pledges or platform, insures everything that is necessary to satisfy reasonable men, to arrest the slave propaganda." To carry a legislative restriction of slavery, the Republicans must have a clear majority of both Houses of Congress and the President, and hold this position "long enough to change the Supreme Court." The last was essential, "for, as now

constituted, or as hereafter filled by *any* Democrat, any law of Congress restricting slaves will be declared void," and thus any legislation will be undone.

"On the other hand," Davis urged, "the election of a President in 1860, of itself, silences and arrests the slave propaganda, if he be elected by a combination of the opposition, in a manner so free as to secure a permanent union of the Republican and American voters." He, alone, "is sufficient, and without him everything else is perfectly worthless." He can veto Congressional legislation, appoint Territorial officers, and also the judges of the Supreme Court. With sagacious foresight, Davis saw that "between now and the end of the next term a majority of the judges now on the bench must, in the course of nature, be substituted by others. Three new appointments will change the complexion of the Court. There are more than three very old men, whose places must be filled by the next administration and that will determine the complexion of the Court for the next generation." The odious "Dred Scott case is a Democratic case, decided by Democratic judges, resting on Democratic party political views of the Constitution and laws, and inspired by Democratic prejudices and sentiments." No Whig judge would have concurred in it, for

Clay and the Whigs believed that slavery "existed only by virtue of the positive law of the land on which it was attempted to be enforced. So that if forbidden by Congress, or if neither forbidden nor sanctioned by Congress, it did not exist; and if Congress has no power over the subject at all, then that, of itself, made all the Territories necessarily and forever free, till they both became States and adopted slavery." In Davis's view, "to accomplish a reversal of the Dred Scott folly, no pledge is needed, no platform, nothing but a President holding Mr. Clay's views. Judges appointed by such a President will instantly repudiate that ridiculous farrago of bad history, worse law, and Democratic partisanship." Davis appreciated fully the great power of the President, as it was to be wielded by Lincoln and as it has been again, in the twentieth century. Therefore, he wrote that the President "is omnipotent against anything but a two-thirds vote of both houses, so that his administration may be censured, but cannot be arrested by any *less* number *by law*." "The tendency was to have a Congress in sympathy with the President, but without such agreement" the "slave propaganda is forever broken down," for, without his consent, there can be passed no slave code for the Territories, nor a repeal of the laws against the slave

trade, nor can there be a repetition of the scenes of Kansas. If the conservative people could unite and carry the election of 1860, they ought to continue in possession of the Federal Government for a generation; but, if they fail, "they may roll up the map of the United States for twenty years."<sup>33</sup>

## NOTES ON CHAPTER VI.

1. On May 9, 1864.
2. "Now a traitor," said Davis in 1864. B. G. Harris asked why Ligon was so called, and Davis, after an angry encounter of words, said: "I respectfully decline to make any reply to the unworthy member from Maryland."
3. In 1864 Davis said that J. C. Groome, who ran against Hicks, was now disloyal, so that the historical significance of that election was considerable, as Hicks's Union sympathies were most important in 1861.
4. Brooks later became a secessionist, and was confined in Forts Lafayette and Warren.
5. 3 Scharf, Md. 273.
6. On February 12.
7. On June 11.
8. On May 24.
9. On January 22.
10. On June 7.
11. On June 7 he condemned any department violating a law by making a contract for the extension of the Capitol without specific authorization, but felt that "If Congress saw fit to waste the people's money, it was no part of the President's business to make them economical."
12. Speech of December 19.
13. On January 15.
14. On June 3—vide position on Clayton-Bulwer Treaty on May 11.

15. His zeal for efficiency in public service was shown on March 2 by his opposition to the attempt to replace on the roll of officers men declared unfit for positions by two Boards of Inquiry.

16. Speech of January 20.

17. On December 23.

18. Speeches and Addresses, 83.

19. Davis here spoke of Calhoun as "a gentleman from whom, in many respects, it is my misfortune to have differed in political opinion, but who, in my judgment, was one of the ablest gentlemen that ever graced the councils of this country—more conservative, manly and upright in his views and convictions, and conduct, than almost any man of his party; always ready to sacrifice party allegiance on the altar of truth; always following the dictates of an independent judgment, as well in his votes as in his reasoning, and, for that reason, justly the worshiped idol of the great Southern section of this country."

20. On April 28.

21. He admitted that grants of land might be made on a condition.

22. The bill said non-resident proprietors should not be taxed higher than resident ones. Davis said this discrimination is a question of State policy, which may prevent "Irish absenteeism."

23. On May 5.

24. On May 9, 1864.

25. Speeches and Addresses, 104.

26. On December 11, 1858, he opposed the impeachment of Judge Watrous, of Texas; on February 9, 1859, he said that the precedent of the contested election case of Vallandigham vs. Campbell, authorized the admission of hearsay evidence in the Nebraska contested election; on February 15 he moved to appropriate an extra amount to Miami Indians not named in the treaty with the tribe, so that the amount given to the enumerated Indians be not unjustly diminished; on March 3 he objected to the report of the Conference Committee on the Post-office bill, said there was no authority to make a contract to carry the mails to the Pacific Coast via Tehuantepec without

revoking the contract made via Panama, and that it was contrary to the privileges of the House for the Chairman of the Committee on Ways and Means to say that the President will or will not sign certain bills.

27. On February 18.

28. On March 1 he proposed not to allow the reopening of old accounts, when the claims of the States were discussed in the Army bill.

29. On March 2.

30. On February 28.

31. Speeches and Addresses, 115.

32. Speeches and Addresses, 119.

33. Scharf, Chron. of Balto., 574, speaks of Anthony Kennedy and Davis as addressing a Know Nothing mass-meeting at Baltimore on October 27, 1859.

## CHAPTER VII.

THE THIRTY-FIFTH CONGRESS  
AND THE STRUGGLE TO PRE-  
SERVE THE UNION.

After being nominated by the American party in 1858 for re-election to Congress, Davis accepted the nomination in a speech at the Maryland Institute, in which he said that "Our policy is to oppose all agitation of slavery." The Thirty-fifth Congress, like the Thirty-third, opened with a long and bitter struggle over the election of a Speaker. Davis voted for John A. Gilmer, of North Carolina, a conservative man, throughout December, 1859, and January, 1860, but on the last day of the latter month he changed his vote to Pennington, of New Jersey, a conservative man, but the Republican candidate, an act which led to "considerable applause from the Republican benches and mingled applause and hisses from the galleries," as *The Globe* reporter noted. This vote, which led, on the next day, to the election of Pennington over McClernand, the Democratic candidate, caused great indignation in many quarters throughout Maryland. As had been the case four years previously, Davis's colleague, Har-



ris, was more conservative, and continued voting for Gilmer to the last. The Maryland Legislature had a Democratic majority, and on February 9 the House of Delegates, by a vote of 62 to 1, passed a resolution that Davis, "by his vote for the candidate of the Black Republicans, has misrepresented the sentiments of all portions of this State, and thereby forfeited the confidence of her people." This resolve, when sent to the Senate, slept until the end of the session; but on February 28, after Davis's defense of himself on the floor of the House, Dr. Lynch, of Baltimore county, offered a resolve there, which he asked be referred to the Committee on the Colored Population, that \$500 be appropriated to transport Henry Winter Davis to Liberia, as he has, in "his late speech, most violently assailed the people of this State, through us their representatives, because of our loyalty to the best interests of the South." McKaig said that if the person named were a worthy colored man, he would vote for the appropriation, but he knew no white man by that name worthy of the notice of the Senate of Maryland. The Senator from Frederick said he refused, as a matter of privilege, to vote on any measure applauding or censuring Congressmen, as they are responsible to their constituents.

The Senate felt that Lynch's proposition

was so unbecoming that, finally, the proposer himself secured unanimous consent to strike it from the journal.

On February 21, 1860, when the House was in Committee of the Whole, Davis seized the opportunity to set forth his opinions of the resolutions and of "their contrivers and supporters"<sup>2</sup> in a superb oration. With scornful sarcasm, he began: "Mr. Chairman, the honorable the Legislature of Maryland has decorated me with its censure. It is my purpose to acknowledge that compliment." He taunted the Democratic majority of the Legislature as being like Christopher Sly in "being out of place in her legislative halls"; as "greatly deficient in sound, practical common sense," but as abounding in the "genius of ignorance," and as needing lawyers to attend their caucus to perfect the laws. "Not elevated to the full sense of the dignity and responsibility of their high place by the great memories which surround them in the State House, where daily they meet, where once the great Congress of the Revolution sat and where George Washington surrendered his sword that the law might thenceforth reign—the caucus is the Legislature, the Legislature the recording clerk for the dictates of the caucus; debate is silenced and consideration is banished." Keeping the offensive, he pilloried the enact-

ments of the Legislature. "In the midst of the excitement in the country upon the Negro Question," men were found in the Legislature "anxious to follow the deplorable example, shocking to the sensibilities of the great mass of the people of Maryland, of reducing into slavery the men that our fathers freed."<sup>2a</sup> "Nothing but the unanimous shriek of indignation which rang from one end of Maryland to the other averted the danger of the passage of some such despotic and oppressive measure and one, seriously and rashly, unsettling the industrial interests of Maryland." The Legislature had taken the control of the police force of Baltimore City from the municipal authorities, and Davis ardently attacked this "flagrant usurpation." As they boasted themselves the "sole guardians in Maryland" of "Southern rights," they had put "cap and bells" on the bill by incorporating therein a proviso that "no Black Republican, or indorser or supporter of the Helper book, shall be appointed to any office" by the Police Board.

On this provision Davis emptied the vials of his wrath; while he held up to equal execration and to ridicule a similar provision found in the recent charter of the Baltimore Street Railway Company, prohibiting any "Black Republican or indorser or approver

of the Helper book" from receiving any of the benefits of or privileges of this act." Then he turned to the examination of the resolution of censure. Prior to the election of Speaker of the House of Representatives, a resolution had passed the House of Delegates "which was intended to condemn beforehand any vote which should not be" for a Democrat, but Davis truly asserted "that all they could do would not make me waver one hair's breadth from what they knew was my firm resolve." His vote for Pennington had "recalled to them that they were committed to follow" the former resolution with "explicit condemnation." He read the first sentence, containing the charge that he had "misrepresented the sentiments of all parts of this State, and thereby forfeited the confidence of her people." Then, with superb scorn, he said: "I respectfully tell the gentlemen who voted for that resolution to take back their message to their masters and say that I speak to their masters face to face and not through them." The Democrat's "whole policy is to poison the minds of our people against every man not a Democrat in the free States; to inspire them with distrust, apprehension and terror; to teach them to look on the accession to power of any one called by the name of Republican as not merely a change of power from one to

another political party, differing in principle and policy, but equally loyal to the United States, but as not far removed from such oppression and danger as to furnish just cause of seeking revolutionary remedies. Their hope seems to be to retain power by the fears of one-half the people for the existence of slavery, and of the other half for the existence of the Union. Agitation, clamor, vituperation, audacious and pertinacious, are the weapons of their warfare." This spirit, like that of Milton's "Portress of Hellgate," stands "ready for the purpose of retaining their hold of power, to let loose on this blessed land the Satan of demoniacal passion."

Davis felt that these resolutions would have little effect on his "constituency which had stood by me, through good report and through evil report," and that his act was "not only approved, but honored and applauded by every man whose opinion I regard." As to that vote, "I, sir, have no apology to make. I have no excuses to render. What I did, I did on my own judgment, and did not look across my shoulder to see what my constituents would think. I told my constituents that I would come here a free man or not at all, and they sent me here on that condition. I told them that if they wanted a slave to represent them, they could get plenty, but I was not one. I

told them that I had already passed through more than one difficult, complex, dangerous session of Congress; that I had been obliged again and again to do that which is least grateful to my feelings; to stand not merely opposed to my honorable political opponents, but to stand alone among my political friends, without the strength and support of which a public man receives from being buoyed up breast high by men of like sentiments, elected on like principles, and who, if there by error, would stand as a shield and bulwark between him and his responsibility. I foresaw, then, exactly as it resulted, that the time would come when I would be obliged again to take that stand; and I wanted my people to know it, so that if they chose to have another one, who would go contrary to his judgment and bend like a willow when the storm came, they might pick him out and choose the material for their work."

"Mr. Chairman, they sent me here, and I have done what I know was my duty." He then recited Mr. Pennington's record as a Governor of New Jersey and as a Whig in the day of Whig greatness, "as a man who had declined official position offered him by Taylor and Fillmore, who was in "favor of the enforcement of every law that any Southern State has an interest in," and who was sound

on the protection of American industry and on river and harbor improvements. Pennington was a man of "moderate views, in favor of silence on the slavery question, of putting an end to the internecine strife of sections that has raged for years, and therefore, of all men, the man to sit in that chair." Davis had expected "clamor over that vote," but was surprised that the Know Nothings in the Legislature, "my own friends, excepting four of them," voted for the resolution. In an amusing manner, he described how they allowed themselves to be frightened, and cried out, "I admire the audacity of the Maryland Democrat as much as I deplore the weakness of the Maryland American."

Davis intended to "meet with all equanimity" the "obloquy attached to the course that I have felt it to be my duty to pursue," and remembered how Clay's vote for John Quincy Adams as President "brought accusation against him." "I have sat at his feet," continued Davis, "and learned my political principles from him. I can tread his path of political martyrdom. Before any cry of Legislatures or people I will not yield, they may pass over my prostrate body or my ruined reputation, but step aside I will not to avoid either fate." He was "aware that we all this day regard the negro question as that which is

decisive, important and controlling." "There have been others at other times, equally important, equally exciting, equally controlling." But whatever be the question, Davis meant always "to assert my independence, awed by no authority into acts which I disapprove.

Non civium ardor *prava* jubentium,  
Mente quatit solida—*neque auster.*

"No sir, not even the *south wind*. Whether it relate to a matter of financial policy, or to a matter of sectional strife, no man is fit for this place who is not willing to take his political life in his hand and, without looking back, go forward on the line of what he regards as right, and, sir, whether it relates to the material interests of my constituents or to those great political interests which are supposed to be bound up with the existence of slavery in the slave States, I trust I shall never allow myself, by any clamor or by any storm, however loud or however fierce, for an instant to be made to veer from that course which strikes me to be right. I am not here merely as a member from the Fourth Congressional District of Maryland. I am not here merely to represent the residue of the State of Maryland. I am not entitled to consult their prejudices as only worthy of regard. I am bound to look to a wider constituency, to a higher



duty. If my duty to that wider constituency can be made to promote the interests of my local constituency, then my duty to the two coincides. But, sir, in the great necessities of public life, there have been heretofore, and there may be again, occasions on which I may be called upon, as other public men have heretofore been, to make the painful decision that the interest of the nation requires that I shall disregard the opinions, unanimous, firm, repeatedly expressed, of my constituency."

The spirit which lay at the bottom of the resolution of the House of Delegates appeared to Davis of "sinister import." He recited the "extraordinary circumstances under which the election of Speaker took place." The "Democratic portion of the House, day after day, branded the representatives of the great majority of the people of the free States as traitors to the country, instigators of assassination, bent upon breaking up and destroying slavery in the States, carrying into the midst of our families the torch and the knife of the assassin and incendiary." Southern States adopted revolutionary resolutions, and, for the first time, a State forgot the Constitutional prohibition of entering into compacts with another and sent a messenger to Virginia, appealing to her, by reason of the John Brown raid, "to send delegates by *law* to a Convention of

States, which, if it did anything, must assume the form and functions of that great revolutionary Congress which took the earlier steps to break the bonds that bound our fathers to the throne of Great Britain." Davis stood there, "sworn to support the Constitution of these United States—not of any other confederacy which a future sun may rise upon," and did right in voting to elect as Speaker a man who was a "symbol of peace." If secession should come, Davis would have neglected his duty had he not helped to organize a House of Representatives competent to sanction measures which might be necessary; or better, to "avert the very possibility of collisions so disastrous," by the election of one under whose auspices "at least there is an hour before strife, when men may pause and become cool." The House of Delegates had really said that "anarchy had better reign than that any one called by the name of Republican should be elected Speaker." Than his vote for Pennington, there was no act of Davis's life he regretted less, "none more defensible on high and statesmanlike reasons, none where the event has more promptly indicated its wisdom." He believed that the calmer judgment of the Democrats would "soften the sweeping judgment which impeached a whole political party of conspiracy to promote servile insurrec-

tion." "John Brown's crime" was "no invasion of Virginia at all, still less an invasion of Virginia by or from a free State. It was a conspiracy to free negroes, arrested in the attempt, defended with arms, stained with murders and punished with death." Not a slave joined Brown voluntarily, and, though the crime was "atrocious," it revealed a state of feeling "on which our eyes ought to rest with satisfaction," for it "negatives the existence of any conspiracy against our peace in the free States of the Confederacy. Neither the plan, nor the execution, revealed any higher intelligence or greater power behind the crazy enthusiasts who acted in the tragedy." With sharp insight, Davis urged the Southerners to permit the "keenness" with which they felt "this crime against the peace of a slave State" to "enable them to appreciate how the more aggravated events in Kansas influenced the minds of men in the free States, and fired the fanaticism of Brown to the point of bloody revenge." Davis believed that the sympathy with Brown was of "no political significance in the populous North," that his "bloody type of fanaticism" was "most rare among the abolitionists," which body of enthusiasts "had never numbered ten members of the House." Sympathy with any convicted criminal was too common to excite surprise. Davis ac-

cepted with full faith Sherman's statement, reiterated by Corwin, that the Republicans had no "intention of invading the rights or quiet of any slaveholding State; that there is no design or desire to tamper with, or trouble, slavery where it exists; that they are willing to let the subject alone, if others are willing to let things stand as they are." He wished to leave unanswered any "vague dissertation on impractical theories, such as the possibility of property in man, or whether slavery be hateful to God," and he pointed out that, from 1855 there had been proposed by the representatives of the free States no bill that was not "defensive in its character; not one that has looked beyond retaining the Territories free which were already free." His conclusion was that: "We have, then, peace before us, if we will only accept it. The free States ask no new law."

On June 2 James A. Stewart, another Maryland Congressman, attacked Davis for that vote for Speaker which caused the election of a Black Republican and made the South lose the chairmanship of almost all committees. In Stewart's Eastern Shore district the people of all parties "utterly condemn and repudiate Davis's course. Davis inquired why the Senate of Maryland did not pass the resolution of condemnation, and Stewart could make only

a lame reply.<sup>3</sup> Stewart continued with the assertion that if Davis would go before the voters of Baltimore and stand by the doctrines of the Republican party, he would not receive more votes than Fremont; for "the people of Maryland are loyal to the Union and the Constitutional rights of the South," and "they look upon the Republican party as hostile to the perpetuity of this Government and at war with the people of the country." Stewart did not know whether Davis subscribed to the doctrines of the Republican party and wished to know where to locate him, but Davis deigned to make him no reply.

Blaine wrote of this brilliant defence that, for "eloquence of expression, force and conclusiveness of reasoning, it is entitled to rank in the political classics of America as Burke's address to the electors of Bristol does among those of England." It was Davis's chief appearance on the floor of the House at this session.

He opposed assessing a duty on wool upon the American, instead of upon the foreign valuation, because the same principle was not elsewhere carried out in the law and because it was difficult to fix upon a reasonable average as to cleanliness, or to cleanse wool in the custom house.<sup>5</sup> He urged an appropriation of \$10,000 for repairs needed at the Bal-

timore Custom House <sup>6</sup> on account of fire, and that the Baltimore and Ohio Railroad be permitted to extend its tracks through certain streets in Washington and to build a bridge over the Potomac River.<sup>7</sup> He refused to support the Pacific Railroad bill, though it proposed an object which lay very near his heart,<sup>8</sup> because the charter was given to a voluntary association, without a grant of eminent domain. The "work can be accomplished only by a corporation, or by direct action of the Government, which method I prefer." He hesitated to "create a corporation, holding such stupendous power," and proposed that the work be subdivided among corporations, each of which should be coextensive with a State, and thus the influence of a non-resident corporation would be prevented.

Believing that sailing vessels were of no value,<sup>9</sup> he advocated fitting up as many as possible of those contained in the navy with auxiliary steam power. He opposed meddling with the arrangement of studies at West Point,<sup>10</sup> and moved to strike out an appropriation for barracks at Camp Cooper and at Fort Monroe, where he had been recently, since the means of the Government were so scanty. He also opposed, on behalf of the Ways and Means Committee, an appropriation for the payment of volunteers called into service in

Kansas in 1856, and the establishment of a post in the Red River Valley, for which there had been no recommendation from the War Department. "The fact that Indians in that locality kill and scalp each other is no valid reason why the Government should appropriate money to build a fort for the protection of the whites." On the other hand, he favored an appropriation for the purchase of ordnance, since the result of "any military operation hereafter is, in great measure, dependent on being able to compete with any nation of the world in the improved arms of modern warfare."<sup>11</sup>

At the Chicago convention of the Republican party in 1860 eight votes were cast for Davis as Vice-President on the first ballot,<sup>12</sup> and we cannot but regret that such a sound anti-slavery man and a Border State Unionist was not named to make the campaign with Lincoln and to lessen the force of the charge that the Republican was a sectional party.<sup>13</sup> When Wilmot, of Pennsylvania, moved not to receive the delegates from Maryland to the convention, Cleveland, of Connecticut, made the convincing reply that "but for Davis, of Maryland, our hopes of victory in the struggle to organize the House of Representatives would have been dashed to pieces, yet we haggled over giving Maryland a vote."<sup>14</sup>

During the Presidential campaign Davis made an important speech to the voters of the Fourth Congressional District.<sup>15</sup> He began with expressing his joy "over the dissolution of the Democratic party," which had proclaimed that, upon its integrity, "depended the integrity of the Union." Davis asserted that the Democratic party had pushed the country near "the brink of the precipice of disunion," and then, after reciting the record of Maryland in voting for Scott and for Fillmore, Presidential candidates opposed to the Democrats, urged his auditors to vote for Bell and Everett. "The most important of all things" was a "change in the government, with which the Democratic party was not fit to be entrusted." The firing on the election mob in Washington, the subjecting of the people of Kansas to military rule, the "weak wielding" of power against the Mormons in Utah, the expedition to Paraguay, the illegal firing on neutral vessels near Vera Cruz, the attempt of Democrats in Congress to have the President seize the States of Chihuahua and Sonora, all these things show that that party has forgotten "all the limitations upon the executive power, and they are grasping at the right to wield the sword at the pleasure of the President." Furthermore, the swelling of the expenses of the Government, in a time of com-



mercial panic, proved their incapacity, as did the incurring of a public debt in a time of profound peace, the corruption of the civil service, the "reckless use of public money in the elections," the veto of Morrill's Agricultural College bill, and the "failure to remodel the tariff so as to protect all the varied interests of American industry." Davis believed that the Democrats should be ousted from power, so that the administration might "give us the laws which are essential to the prosperity of the industry of the country," build the Pacific railroad, "reinstate the system of improvement of rivers and harbors," reorganize the navy, and place the army upon a proper footing. These reforms will never be accomplished by the Democratic party; for, so long as it "shall remain in power, so long there will be nothing but one eternal howl on the negro question to keep themselves in."

Through his arduous public duties Davis had been unable to attend a public meeting before this one, but he had kept his eye upon the current of public affairs. With absolute truth, he told his audience that he was not "frightened by popular clamor," nor "eaten up by any personal ambition that would lead me to hide, in any particular, any opinion of mine." He referred to his vote for Pennington, which he would repeat, if it were necessary. He

could not be induced, by "any amount of intimidation or threat or insinuation," to "make any combination with a Democrat." "I will do everything that is honorable to elect John Bell." The Democratic party had "two wings, but no body," and the opposition, "representing the great body of the once powerful and dominant Whig party," was also divided from top to bottom. This was a great misfortune, for neither Lincoln nor Bell, if chosen President, could carry on the Government without the united support of these members of Congress who opposed the Democrats. The "obliteration of the lines of demarcation" between followers of Bell and of Lincoln must be striven for. Davis was "for that party really of the Union and of the Constitution—a party united and powerful over the whole Republic, devoted to the interests of the whole country—which will inflict wrong or insult on the sentiments, the feelings, the rights, the interests of none." He warned men not "to excite passions or fears wantonly, for it is difficult to calm excited passions or fears." Davis yielded to "none in devotion to the interests" of Bell, but in eloquent phrases declared that he would never allow himself to "join in a clamor" against the Republicans, "which I know to be baseless, which I believe to be in a great measure dishonest, and which I am con-

vinced is dangerous to the best interests of the country." The North was not "filled with John Browns," the Republicans were not "traitors to the Constitution, hostile to your interests, bent on servile insurrection, endeavoring to invade your State institutions and make your families insecure and your lives a torment." Those who spread these ideas "are playing into the hands of that element of disunion which exists at the South," and which desired, in the event of Lincoln's election, "to precipitate them into a revolution." In voting for candidates for office, "We must guide ourselves according to *the policy* we know they are going to pursue, and allow their abstract opinions to remain abstract opinions, unless they are called into active practice and are matters directly in issue. I say that, at this moment, according to the avowal of every party not Democratic—mark the limitation—according to the avowal of every party excepting the two wings of the Democratic party, *the slavery question is absolutely settled*, if the Democracy will let it alone." Lincoln had even stated that the Fugitive Slave law should be executed. Davis believed that "the way to settle the slavery question is to be silent on it," and that there was "no ground for fear, in the event of Mr. Lincoln's succeeding." Mr. Breckenridge, the "seceding candidate of the

Democratic party," holds opinions "the most extreme, untenable and dangerous of all," for "he maintains that the Constitution of itself carries slavery into the Territories; that, under it, any individual has a right to carry his slave there without any law; and that laws must be passed by Congress, as they may become needful, for the purpose of protecting it." The election of Mr. Breckenridge will, therefore, result in a "perpetual struggle in the Congress of the United States by persons who desire to carry negroes into the Territories, and do not wish to do so until they are protected by law, to secure the passage of laws by Congress to protect them there. There is not the remotest probability that such a law can ever be passed through both Houses of Congress. It is, therefore, an element of perpetual discord, perpetually tending to widen still farther apart the two portions of the Union."

Douglas, in the second place, had shown "that the Constitution does not carry slavery into the Territory," that the "inhabitants of a Territory have themselves the absolute right to introduce and allow slavery, if they see fit." He had the better of Breckenridge, "as a question of political history." The "extreme Southern portion of his party would not lend themselves to him; they thought they had been dealing with a tool, and they found they had

been dealing with a master." Douglas had done another good thing in agreeing with Reverdy Johnson, who argued the Dred Scott case,<sup>16</sup> in saying that the Supreme Court never passed upon Breckenridge's doctrine, which had been "adopted by the great body of the Democratic party at the South." That party had "lived upon its boasted orthodoxy for the last twenty years," and now Douglas had given "again freedom of opinion," so that "men can speak above their breath; men can read history, and repeat it, without the fear of being tarred and feathered in any neighborhood in the South." For this service "future generations will owe him a debt of gratitude."

Turning to Bell, Davis admitted that, "as a matter of abstract opinion," he agreed with Breckenridge; but, nominated by the Constitutional Union party, he stood upon a platform "in favor of things remaining as they are," and "of silence on the negro question." Everett held opposite opinions, but the "question is never what he may think as a question of law, but what he will *do* as an administrator of the law." He had formerly expressed anti-slavery opinions, but now had accepted a nomination of a party pledging its nominees "to silence, to quiet, to leaving things as they are, to the faithful and honest execution of every law."

Lastly, he turned to "meet the question right in the eye," "what are the opinions of Mr. Lincoln?" Many persons said that, if he were elected, they would dissolve the Union. Davis did not believe that they would do this, but examined "the ground upon which they might act and found no question open, except the question of the Territories, which were all absolutely free in point of fact." They were in the exact condition that they were, when "Clay introduced his great Compromise bill of 1850," with reference to territory acquired from Mexico. The "great wisdom of that compromise was that it stated that, as slavery did not exist nor was likely to be introduced therein, it was not expedient for Congress to provide by law for the introduction or exclusion of the institution." With masterly skill Davis continued, linking Lincoln's name to that of the revered Whig leader and claiming that both men thought the same with reference "to the territory—that it is free. It is, therefore, needless to pass any law upon the subject." Quotations from Clay's speeches proved that he considered slavery an evil which "ought not to be extended voluntarily." Lincoln also had "no legislation to ask, unless legislation is asked on the other side." John Sherman, when he was the Republican candidate for the Speakership, made a similar

“great declaration,” that “there is not one subject of sectional controversy which can possibly arise, unless it is thrust upon us by the opponents.” From the time of the repeal of the Missouri Compromise, the most extreme Republican propositions aimed at nothing more than “reinstating things as they were prior” to that repeal. “The struggle has been, on the part of the Administration, in Democratic hands, to force slavery into” Kansas against the will of the people. The struggle, on the part of the whole body of the Northern people, has been to prevent slavery from being forced into Kansas.” Davis had been “a party to all this controversy,” struggling sometimes mistakenly to do what he thought was best. He summarized the history of the Congressional treatment of the subject to prove his point. The Republican platform at Chicago left out the provision of “the wild platform” of 1856, which called for laws to “prohibit in the Territories those twin relics of barbarism, polygamy and slavery,” and the bills which Grow, of Pennsylvania, a “stiff Free Soiler,” introduced into Congress for the organization of new Territories, simply declared, in the spirit of Clay, that nothing in the bills should be taken to authorize slavery, an “imprudent” declaration of opinion, but not a “law of affirmative exclusion.” The men

of Maryland were exhorted "to look at the facts and to remember that, among the millions of the North, there are men as wise as we are, as honest as we are, as well educated as we are, having as great interests at stake in the perpetuity of the Union as we have, and as earnestly and honestly devoted to the integrity of the Constitution as we are, and that they are not likely, deliberately, to invite civil war." Those who were "furious on the negro question" were an "equally small minority in both sections." Their "power is clamor." The proof that the "conservative masses of the North" were misrepresented was shown, in that the Abolitionists were talking of putting a separate Presidential ticket in the field, and that the investigations of the John Brown raid, made by the United States Senate and by the Virginia Legislature, found no evidence implicating "any man holding political position, or aspiring to hold any position, in the North, with that insane performance." Even the Abolitionists in general, "so far from exciting rebellion, are of the Quaker's opinion, that it is wrong to shed blood." If Lincoln wins, he will let the slavery question rest where it is, and will agree with Bates, who stated that, with slavery in the States, Congress had no concern, but that Congress ought not to exercise the power which it had, so as



to "plant and establish slavery in any Territory heretofore" free, or to "acquire tropical regions for the purpose of converting them into slave States." The Democratic party alone wished to disturb the *status quo*, to acquire additional territory in Mexico, which was free; or in Cuba, which was slave. The threats against the Union, in the event of Lincoln's election, formed "another instance of that persistent agitation of the slavery question, and appealing to men's fears and attempting to shake their nerves, which has been the policy, in my judgment, of the Democratic party for a great many years past." Davis did not share any fear of disunion, and he was averse to the fusion movement against Lincoln, which had begun in some States. If there were real danger, "all parties should be merged in the presence of the over-ruling necessity of the country," over the whole country, and not merely in one or two doubtful States in the North. For himself, Davis said again that he would "do anything that is honorable to elect John Bell to the Presidency," but he would "not give the lie to all political truth by casting a vote, or half a vote, for men with whom I differ on every political question." Fusion would not really help Bell. If the conditions were as grievous as the Democrats say, let them abandon their candidates,

vote for Bell, the Union candidate, and certainly defeat Lincoln. A fusion of Bell voters with the Democrats would probably throw the election into the House, where "the insane method of assault upon and misrepresentation of Mr. Lincoln's opinions" by a portion of Bell's supporters, had "put an end to the possibility" of the Republicans voting for Bell. The Democratic States would not vote for Bell, and there would probably be no election in the House. "Scenes of violence and tumult" might follow. Davis had gone through two contests in the House of Representatives for the election of Speaker and had "seen those scenes of violence; I have heard words of menace; I have looked, from day to day, to some outbreak that would drench that hall in blood." "By the infinite blessing of Providence, that danger has been averted," but Davis would not take the risk again of bringing into the House a controversy which the people ought to decide. The Democratic majority in the Senate would gladly elect one of that party as Vice-President, if possible, and, if not, may prefer to have a year of interregnum, or to elect Breckenridge as President of the Senate and treat him as President of the United States. "When the matter goes to the Senate, if they see fit to make no election, we are pushed upon this dangerous alter-

native, a vacant or a disputed Presidency." Douglas, Breckenridge, or even Bell, are as sectional candidate as is Lincoln, for it is the misery of our condition that, turn wherever we may, we find that this infernal strife has split every body into a thousand pieces, and no man can tell where to find the piece that belongs to him." This condition should be faced. "There is a degree of timidity that is, of all things, in my judgment, the most dangerous in political life. Half the blood that was shed in the French Revolution was shed from sheer terror. It was not courage, it was not ferocity, it was sheer terror that made them cut their neighbors' throats today, lest those neighbors should cut theirs tomorrow. That is the state of mind in which the conduct of too many in this canvass tends to throw the people of the United States." He concluded his address with an account of the destruction of the image of Serapis at Alexandria, and with the cry, "Gentlemen, smite fearlessly the Democratic party. The Union will survive its fragments."

Mindful of the dire emergency, Davis wrote from Washington a public letter to his constituents on January 2, 1861.<sup>17</sup> Lincoln had been elected; South Carolina had seceded. The other far-Southern States were following her. When Congress met in December, Davis

had been named as the member from Maryland of the special committee, consisting of one Congressman from each State, to consider that part of President Buchanan's message which related to the "present perilous condition of the country." From that close contact with the course of events, out of his earnest soul, he tried to avert a disastrous ending of that "drama of revolution" which had been opened in South Carolina. To his vision, "Ambitious and restless men, availing themselves of factitious fear, which they have inspired, and sectional passions, which they have inflamed, are conspiring the overthrow of the Government. They hope to found a Southern Confederacy on the fragments of the United States of America," and ask Maryland to join it, rather than to "desert the South and join the North." Davis replied that such was not the question which Maryland was "called upon to answer. Maryland is now joined to both the free and the slave States, under the wisest Constitution and by the best government the world ever saw. That government has never wronged her, or failed to protect her. The formation of a Southern Confederacy must be preceded by the destruction of that government. Till it is broken up and its armies defeated, there can be no Southern Confederacy. Maryland, therefore, is asked,

not whether she prefers to enter a Northern or a Southern Confederacy, but she is asked to form a coalition to break up and destroy the Constitution which Washington founded and to plunge into the horrors of a civil war for the purpose of creating a Southern Confederacy. That is the true question you have to consider, for peaceful secession is a delusion, and if you yield to the arts now employed to delude you, the soil of Maryland will be trampled by armies struggling for the National Capitol."

Davis unhesitatingly answered his question by saying that "the interests of Maryland are indissolubly connected with the interests of the United States; any division of the confederacy is to her fatal." His foresight led him to predict that, "no matter what new combinations arise, whether Maryland stands alone or unites her fate to any new confederacy on her Northern or her Southern border, she is utterly ruined and prostrate, for this generation at least. When she will revive, God only knows. If the present Government be destroyed, Maryland slaveholders lose the only guarantee for the return of their slaves. Every commercial line of communication is severed. Custom house barriers arrest her merchants at every frontier. Her commerce on the ocean is the prey of every pirate, or the

sport of every maritime power. Her great railroad loses every connection which makes it valuable. If two republics divide the territory of the United States, Maryland is ruined, whichever she join."

If she joins the South, "her slaves will walk over the Pennsylvania line unmolested," and the reopened African slave trade will destroy the value of those who may remain. "Free trade will open every port, and cotton and woolen factories and iron and machine works of Maryland would be prostrate before European competition." Baltimore will not be the emporium of such a republic. "Nothing intended for the South will ever pass Norfolk, and from the West we will be severed by custom houses, duties and political antipathies in favor of New York." "The expenses of government must be doubled by the necessity of a large standing army, for all the conditions of present security will be gone; and a great Northern power, divided from us by an air line, will be an ever-impending danger. In the war of separation, and even after, Maryland will be an outgoing province, without a fortification or a natural boundary, always overrun at the first sound of arms, incapable of being defended by the weaker power, of which she will form a part, whose natural line of defense must be the Potomac,

and on this side of which no Southern army would venture a decisive battle."

Joining a Northern republic would also be ruinous for slavery and Southern trade would be lost; but there can be no division of the Union along State lines. "Western Virginia belongs to the Valley of the Mississippi. Virginia can never withdraw from the existing Confederacy undivided; her western boundary will be the Blue Ridge. Maryland will be swayed by adverse forces, which will probably give her northern and western counties to Pennsylvania; her peninsular to Virginia." As to Baltimore, whatever may be her sympathies "in the present political heats," in the long run her interests will decide her future relations.

In spite of these consequences, men, "madly bent on revolution," wish the "convocation of the Legislature." Men join with them who are strangers to these purposes and blind to the results of such a session, which will "inspire the revolutionists," "dishearten the friends of the Government" in the South, "destroy the moderate feelings of the free States," and "greatly embarrass the President." "The halls of legislation will immediately become the focus of revolutionary conspiracy," which may lead to anarchy and the flames of civil war, while "within its constitutional powers"

the Legislature can do nothing. Maryland's only danger is the destruction of the Union. Every person in Maryland is bound to obey the Federal laws as enforced by the President. The Constitution forbids any agreement between Maryland and any other State for any purpose, and a convention of the central slave States would be an illegal and possibly a "treasonable assembly to levy war for the overthrow of the Government." "Maryland is not ready to be entrapped. Those who propose such a convention should specify "the acts, so plainly unconstitutional and so intolerably oppressive to them, that they are willing to tear the Government to pieces in the pursuit of redress." If there are such acts, and the people prepare to destroy the Union, let them also "prepare their hearts for war, and their fields for desolation, and their children for slaughter. Let them prepare for an era of proscriptions, confiscations and exiles, to be followed by anarchy and be closed by the rude despotism of the sword." There are no sufficient causes for secession. "Will any one propose gravely to rush on such ruin, because a few negroes have run away and not been caught—because some liberty bills have been passed and never acted on; because a mob, once in a while, has resisted an unpopular law; because Maryland has been in a mi-



nority in a Presidential election? Are the people of Maryland dreaming of a revolution, in the event of a failure to *resettle* the Territorial question to the satisfaction of *Southern secessionists*?" No, "if discontented men attempt to destroy the Government, because it is not changed to suit them, the right and the duty, the highest interest and the loyal honor of Maryland require her to sustain the laws of the United States and the Constitution, which are her only safety. Let us not countenance revolutionary violence to redress imaginary wrongs by impossible measures." Davis believed that "the firm attitude of Maryland is now the chief hope of peace," and that if the citizens of the State "firmly adhere to the United States against all enemies, resolved to obey the Constitution and see it obeyed, your example will arrest the spirit of revolution and greatly aid the Government in restoring, without bloodshed, its authority."

When the report of the special committee of thirty-three was made, Davis addressed the House on February 7,<sup>18</sup> expressing the strongest Union sentiments. Five years later Creswell said: "For such utterances only a small part of the people of his State was on that day prepared. Seduced by the wish, they still believed that the Union could be preserved by fair and mutual concessions."<sup>19</sup> His language

was then deemed too harsh and unconciliatory and hundreds, I among the number, denounced him in unmeasured terms. Before the expiration of three months, events had demonstrated his wisdom and our folly." Yet there is small wonder that the scorching words with which he began his speech startled men, who still hoped against hope for an accommodation. Rising in his place, Davis cried: "We are at the end of the insane revel of partisan license which for thirty years has, in the United States, worn the mask of government. We are about to close that masquerade by the dance of death. The natives of the world look anxiously to see if the people, ere they tread that measure, will come to themselves." Vehemently he attacked the policy of the Democratic administrations, which had as its result that "the original ideas of the Constitution have faded from men's minds," so that they no longer remember "that the United States is a government entitled to respect and command, that the Constitution furnishes remedy for every grievance and a mode of redress for every wrong; that the States are limited within their spheres, are charged with no duties to each other, and bear no relation to the other States, excepting through their common head, the Government of the United States." Consequently, "unconstitutional commissioners

flit from State to State, or assemble at the national capital to counsel peace or instigate war." To Davis's view, "the operation of the Government has been withdrawn from the great public interests, in order that competing parties might not be embarrassed in the struggle for power by diversities of opinion upon questions of policy, and the public mind, in that struggle, has been exclusively turned on the slavery question, which no interest required to be touched by any department of the Government." While the people's "passions, inflamed by the fierce struggle for the Presidency, were the easy prey of revolutionary audacity, within two months of a formal, peaceful, regular election of the Chief Magistrate of the United States, in which the whole body of the people of each State competed with zeal for the prize, without any new event intervening, without any new grievances alleged, without any new menaces having been made, we have seen, in the short course of one month, a small portion of the population of six States transcend the bounds, at a single leap, at once of the State and the National Constitutions, usurp the extraordinary prerogative of repealing the supreme law of the land, exclude the great mass of their fellow-citizens from the protection of the Constitution, declare themselves emancipated from the obli-

gations which the Constitution pronounces to be supreme over them and over their laws, arrogate to themselves all the prerogatives of independent power, rescind the acts of cession of the public property, occupy the public offices, seize the fortresses of the United States, confided to the faith of the people among whom they were placed, embezzle the public arms concentrated there in defense of the United States, array thousands of men in arms against the United States, and actually wage war on the Union by besieging two of their fortresses and firing on a vessel bearing, under the flag of the United States, reinforcements and provisions to one of them." The disloyal conduct of Buchanan's Cabinet appeared to obliterate the "very boundaries of right and wrong," and "the doom of the Republic seems to be sealed, when the President, surrounded by such ministers, permits, without rebuke, the Government to be betrayed, neglects the solemn warning of the first soldier of the age (General Scott), till almost every fort is a prey to domestic treason, and accepts assurances of peace in his time, at the expense of leaving the national honor unguarded. His message gives aid and comfort to the enemies of the Union by avowing his inability to maintain its integrity, and, paralyzed and stupefied, he stands amid the crash of the falling

republic, still muttering—not in my time—not in my time—after me, the deluge.”

Buchanan has earned the Tacitean phrase, “*consensu omnium capax imperii, nisi imperasset*”; for “the acquisition of supreme power has revealed his incapacity and crowns him with the unenviable honor of the chief destroyer of his country’s greatness.”

If the rebellious States are recognized, we “abandon the Gulf and Coast of Mexico, or surrender the forts of the United States; yield the privilege of free commerce and free intercourse; strike down the guarantees of the Constitution for our fellow-citizens in all that wide region; create a thousand miles of interior frontier to be furnished with internal custom houses and armed with internal forts, to be themselves a prey to the next caprice of State sovereignty; organize a vast standing army, ready at a moment’s warning to resist aggression; create upon our Southern boundary a perpetual foothold for foreign powers whenever caprice, ambition or hostility may see fit to invite the despot of France, or the aggressive power of England to attack us upon our undefended frontier; sever that unity of territory which we have spent millions and labored through three generations to create and establish; pull down the flag of the United States and take a lower station

among the nations of the earth; abandon the high prerogative of leading the march of freedom, the hope of struggling nationalities, the terror of frowning tyrants, the boast of the world, the light of liberty, to become the sport and prey of despots whose thrones we consolidate by our fall; to be greeted by Mexico with the salutation, 'Art thou also become weak as we? Art thou become like unto us?' This is recognition." "Refuse to recognize! We must not coerce a State in the peaceful process of secession. We must not coerce a State engaged in the peaceful process of firing into a United States vessel to prevent the re-enforcement of a United States fort. We must not coerce States which, without any declaration of war or any act of hostility of any kind, have united, as have Mississippi, Florida and Louisiana, their joint force to seize a public fortress. We must not coerce a State which has planted cannon upon its shores to prevent the free navigation of the Mississippi. We must not coerce a State which has robbed the United States Treasury. This is peaceful secession." His clear vision appreciated fully the situation. He did not wish "to exasperate the already too much inflamed state of the public mind;" but he insisted "that the Constitution of the United States and the laws made in pursuance thereof must be enforced;

and they who stand across the path of that enforcement must either destroy the power of the United States, or it will destroy them." He still hoped that such collision might be avoided, that "the revenues may be collected in disaffected ports on board United States ships," that no vessel shall be allowed "to pass out unless she has papers of the United States on board," that postal routes may be suspended, that courts of justice "may be supported as they were in Utah," or removed to "States which are not disturbed." Even so clear a vision as his, still hoped that these "regular peaceful methods" would "allow time for reflection." Davis believed that "the Government of the United States was" vested by the Constitution with adequate power to meet every emergency. It is required to guarantee a republican form of government to every State. A government whose officers are not sworn to support the Constitution of the United States is mere usurpation and not a republican government." The Federal Government has the power to "suppress insurrection," and "insurrections ordered by State authority will be suppressed as promptly as others." "If, to the regular execution of the laws of the United States, armed resistance shall be made, the Government has authority to disperse those who oppose the enforcement. This is not war.

It is supporting the civil power by the military arm, against unlawful combinations too powerful to be otherwise dealt with. When the United States suppress an insurrection, or enforce the laws, they harm only those *actually* resisting, and then, only so far as to remove their resistance to the *civil* arm. Its end is their dispersion. The United States carry the Constitution before their arms; its provisions hedge their bayonets, and every weapon sinks when its authority is admitted."

The war is due to the "revolutionary faction," long "mingled in the ranks" of the Democratic party, to the "tenacity with which defeated politicians cling to power, and to the excitement of the popular mind by "fierce discussions upon the topic of slavery, on which the Southern people are so justly sensitive." In these discussions there have been made "the grossest misrepresentations of the purposes of the great body of the Northern people." Without a constitutional amendment, Davis believed that there might be peace, if Northern men, like Charles Francis Adams and Thomas Corwin, could induce the South to believe that there existed no purpose to disturb slavery in any State.

Davis then proceeded to lay before the House the results to which the Committee of Thirty-three had come, "to compare the rem-



edies that the majority and the minority of the committee, respectively, propose, and to contrast the complaints and the remedies of the minority with themselves.”

The first recommendation was that an endeavor be made to secure the repeal of the personal liberty laws of the States and the amendment of the fugitive slave law, so “as not to give cause or pretext for the fears which it has occasioned at the North,” by providing, in case of a claim of freedom, for a trial before a court of the United States in the slave State whither the alleged fugitive is carried. The plan of the minority, that when “fugitives are rescued by violence, the United States shall pay the value to their owner and have the privilege of suing the county or district permitting the rescue for the amount,” would “perpetuate,” not “close the slavery controversy.”

As to Territories, the South had secured the repeal of the Missouri Compromise line and now demands that it be restored by constitutional amendment. “A more flagrant, inexplicable, unintelligible case of capricious inconsistency is unknown to history.” No law can be passed through Congress, “establishing slavery in an inch of territory where it does not already exist,” yet this amendment stated that “slavery is hereby recognized as existing”

south of  $36^{\circ} 30'$  north latitude. The South not only asks an impossible thing, but also asks "the people of the North to declare that they have been hypocritical in their opinions, that African slavery is not merely unpolitic, but immoral, and themselves ingraft in the Constitution a doctrine which you accuse them of hating so eternally that they are struggling to destroy it, illegally and unconstitutionally." The only territory then owned by the United States south of the Missouri line was that of New Mexico, and the proposal of C. F. Adams, which Davis endorsed, was to form that into a State, removing the subject of controversy, and to leave the residue of the territory north of the line to the administration of the law. In the two months of the session which had passed no member had urged the exclusion of slavery from this Northern region. The propositions which Davis advocated would satisfy the people, and he believed that they would prevent Virginia from seceding.

He could speak for Maryland. "Confident in the strength of this great Government to protect every interest, grateful for almost a century of unalloyed blessings, she has fomented no agitation; she has done no act to disturb the public peace; she has rested in the consciousness that, if there be wrong, the Con-

gress of the United States will remedy it; and that none exists which revolution would not aggravate." He asserted that he spoke for "the people of Maryland, who are loyal to the United States," and continued, saying: "In Maryland we are dull and cannot comprehend the right of secession. We do not recognize the right of Maryland to repeal the Constitution of the United States; and if any convention there called by whatever authority,<sup>20</sup> under whatever auspices, undertake to inaugurate revolution in Maryland, their authority will be resisted and defied in arms on the soil of Maryland, in the name and by the authority of the Constitution of the United States. A majority have no more right than a minority. The right of a majority is a constitutional right. For the destruction of the Constitution they can have no right. We in Maryland will submit to no attempt of a minority, or a majority, to drag us from under the flag of the Union." With such brave words did he hearten his followers. With the majority of the Committee, Davis saw no need to prohibit by constitutional amendment the abolition of slavery in the forts, dockyards, and District of Columbia, nor of the interstate slave trade, nor to make these prohibitions and the articles touching the ratio of representation and fugitives from labor, unchangeable,

for no one proposed to change them. "The question of the immunity of slavery in the States" appeared, however, to Davis to be "very different." When slavery was established by a State, the "majority proposed to quiet forever apprehension that the North would destroy" the institution, and "anew to consecrate the principle of State rights in internal affairs by forbidding any change in the Constitution affecting slavery in the States." Davis knew thoroughly, however, that "no guarantee of slavery will silence agitation, or the pulpit, or the press, or incendiary publications, or incitements to revolt, or the organized invasion of States," like John Brown's. Yet he also knew that the Northern people now disclaimed the contemplation of disturbing slavery in the States, and that if that impression could be spread throughout the South "the revolutionists will have few followers and peace and harmony will be restored to our people, in spite of every effort to disturb them."

In the debates of the Congressional Session of 1860-61, outside of the forementioned speech, Davis took almost no part, except to record his vote<sup>21</sup> in favor of Major Anderson's course in removing to Fort Sumter.<sup>22</sup> He was active during those months in the effort to preserve the Union, and Blaine, a clear-sight-

ed observer, wrote in after years that, though Davis had not co-operated with the Republicans in 1860, "under all circumstances," he was a devoted friend of the Union, and that, "more than to all others, to him is due the maintenance of loyalty in Maryland."<sup>23</sup>

As early as January, 1861, Lincoln was considering Davis as a possible member of his Cabinet,<sup>24</sup> and such an appointment was strongly urged, not only by the Union men of Maryland, but also by such an astute politician from another State as Thurlow Weed.<sup>25</sup> The influence of the Blair family, however, was sufficient to have one of their members named as Postmaster-General, and as Montgomery Blair was a resident of Maryland, there was, of course, no place for Davis. Blair's influence in Maryland was small, and he was not regarded as one of the State's leaders, so that the Border State Republicans were dissatisfied. As the Cabinet contained more former Democrats than Whigs, they claimed that it was not as strongly Union a body as Buchanan's final Cabinet, which contained Holt, Dix and Stanton. Lincoln, however, held to his decision to name Blair with such firmness that he said: "When that slate breaks again, it will break at the top."<sup>26</sup> The breach between Lincoln and Davis was never healed. The latter was admitted by Lincoln's<sup>27</sup> friends

to be a "man of too much integrity and elevation of character to allow the imputation that his action on public matters was dictated entirely by feeling or caprice," but it is quite probable that Lincoln's failure to select a more representative man had its effect in causing Davis to distrust the President's wisdom.<sup>23</sup>

#### NOTES ON CHAPTER VII.

1. On March 21, E. J. Hall wrote Coleman Yellott, Senator from Baltimore City, asking him how he would have voted on the House resolution. He responded in a letter dated March 28, which the *Baltimore Clipper* of April 3 said was a fine campaign document and which was published in pamphlet form, with the title, "The North and the South: Reasons Why Coleman Yellott, the State Senator of Baltimore City, would not have voted to censure Henry Winter Davis for voting for William Pennington for Speaker of the House of Representatives." Yellott said that, as a Southern man and a slaveholder, he would not have voted for McClernand, for he regarded the Democratic party as a dangerous enemy to the true interests of the South, nor would he have voted for Pennington, because he was a sectional candidate. While not approving Davis's vote, he would not have censured him, and he pointed out the fact that the Anti-Slavery vote decreased from 1848 to 1852 because of good Whig administration. Yellott objected to emigrants voting on the slavery question, and was "ardently attached to the principles of the American party."

2. Speeches and Addresses, 126.

2a. Brackett, *Negro in Maryland*, pp. 256 ff.

3. He said because of the Police bill and other important matters. Davis rejoined that the Police bill passed before his speech and the session of the Legislature did not end until March 10.

4. I, *Twenty Years in Congress*, 498.

5. Speech of May 9.

6. On May 23.

7. On June 9, Grow, of Pennsylvania, proposed as an amendment that the railroad be required to connect with the P., W. & B. R. R. in Baltimore.

8. On May 29.

9. On June 11.

10. On June 14.

11. As chairman of the conferees on the Army Appropriation bill, he submitted a report, which the House adopted on June 19.

12. A. K. McClure, "Lincoln and the Men of the War Time," 41.

13. Burgess, Civil War, I, p. 67.

14. Globe, June 20, 1860.

15. Speeches and Addresses, 146. Davis's position is clearly shown by the following letter, undated, in the possession of the author:

MY DEAR NICHOLLS: I think our friends have just cause to be disgusted with the self-constituted Union party leaders, and your resolution to make your own nomination for Mayor and not to submit to their dictation meets my hearty approval.

I think also we are under no obligation to support the Union nominees unless we think it advisable so to do to save Maryland from the horrors of Democratic rule, and I confess I do not think it possible to save the State by any other course at this time. Thousands who would support Lincoln will also support Bell, but many who will support Bell will not support Lincoln.

If these parties *divide* the Democrats must take the State, and we lose Court of Appeals, the Criminal Court Judge, the Legislature, a Senator in Kennedy's place and the next Governor. Surely such consequences are too serious to be encountered merely to spite ourselves for the insolence of the Union leaders. The State of Maryland *cannot* be carried for Lincoln; there should, therefore, be *no* Lincoln ticket in Maryland for the same reason that there should be no Bell ticket in New Jersey or Pennsylvania. Let us adhere to this policy and we will save Maryland from the Democrats and hold the *future* in our hands. Do nothing rashly till I see you.

Yours,

H. WINTER DAVIS.

16. Davis added that it was "difficult for any one who knows anything about the legal points really involved in the record before the Court to surmise how it was possible for them even to have gotten at it."

17. Speeches and Addresses, 189.

18. Speeches and Addresses, 200.

19. Speeches and Addresses, XXIII.

20. A self-called State Convention met at Baltimore on February 18.

21. On January 9.

22. On March 2, as chairman of the managers on part of the House, he presented the report of the Committee of Conference on the Civil Appropriation bill.

23. I, Twenty Years in Congress, 498.

24. 3 Nicolay & Hay's Lincoln, 364; 9, Nicolay & Hay, 113. Lincoln's biographers state that Lincoln had the highest admiration for Davis, because of his conduct in the Thirty-fifth Congress.

25. I Memoirs, 606. See Riddle's Wade, 259.

26. Vide 3 Nicolay & Hay, 364; I Blaine's Twenty Years in Congress, 285.

27. 9 Nicolay & Hay, 113.

28. Inasmuch as Davis had supported Bell in the Presidential campaign, a delegation of Republicans, including John T. Graham, who in earlier and later years was a faithful follower of Davis, waited on Lincoln to ask that some other than Davis be named. They said that no one but a man who voted the Republican ticket in the preceding year should be named for office. "Why, there aren't enough of you to fill the Maryland offices," replied Lincoln. "Then give each of us two offices," was the unabashed response. On September 20, 1864, after a conversation with Lincoln and Blair over men and things in Maryland, Welles wrote (2 Welles Diary, 153): "In the early days of the administration Henry Winter Davis and his crew had been more regarded than they deserved." I have found absolutely no proof of this statement. Davis's position as a Border State Union man, opposed to the Abolitionists, and as an opponent of Montgomery Blair, is shown by a story that Judge Hugh L. Bond told Capt. H. P. Goddard (*Baltimore*



*Sunday Herald*, March 8, 1903), that Davis was reluctant to call on Wendell Phillips because of his dislike for the Abolitionists, and, after he had been induced to call, he said: "How can Phillips be honest and look so like Montgomery Blair?"

Mr. J. F. Essary, in his *Maryland in National History*, at page 226, states that Montgomery Blair was for some time a Know Nothing, and that his departure from that political party caused the beginning of the hostility between him and Davis. Mr. John T. Graham, who was a prominent member of the American party and close friend of Davis, stated in December, 1915, that if Blair was ever a Know Nothing, he was very quiet about the matter, as Graham had never heard of it, and that from his close intercourse with Davis, Graham was able to assert positively that there was no such cause for the unfriendliness the two men showed each other.

The following letter is of interest, as showing the relation of the Blairs to the Maryland Republicans:

OFFICE OF THE TRIBUNE,

New York, August 24, 1860.

*Sir*—You ask how I know that Frank Blair is an Emancipationist. I answer:

1. By the fact that he has emancipated all his own slaves.
2. By his open avowals in many speeches that he favors emancipation in Missouri. You say you do not find emancipation set forth as a principle in the Chicago platform. Of course not. Emancipation is an affair of the States and has no right to a place in the national platform.

Yours,

HORACE GREELEY.

JNO. T. GRAHAM, ESQ.,  
Baltimore, Md.

## CHAPTER VIII.

SUPPORT OF THE UNION  
(1861-63).

During the troublous weeks of the Spring of 1861 no one was more outspoken than Davis for the Union cause, nor did any one do more to keep Maryland in the Union. He even took so extreme a stand as to write to the *New York Tribune*, with James R. Partridge and Archibald Stirling, Jr., and request that the arms, arsenals and forts in Maryland be placed in the hands of the Union men of the State. When Lincoln called for a special session of Congress and it was necessary to elect a representative from the Fourth Congressional District, Davis at once announced himself as a candidate "upon the basis of unconditional maintenance of the Union."<sup>1</sup> He added: "Should my fellow-citizens of like views manifest their preference for a different candidate on that basis, it is not my purpose to embarrass them." He was not a self-seeker; but, as no one else came forward, he led the Union forces in Baltimore. Four days after he proclaimed his candidacy, the Sixth Massachusetts Regiment attempted to march through Baltimore to the re-enforcement of Washington. During the

dark days which followed Davis was not idle, but, as he wrote to William H. Seward, the Secretary of State, on April 28: "I have been trying to collect the persons appointed, scattered by the storm, and to compel them to take their offices or to decline. I have sought men of undoubted courage and capacity for the places vacated. We must show the secessionists that we are not frightened, but are resolved to maintain the Government in the exercise of all its functions in Maryland."

"We have organized a guard, who will accompany the officers and hold the public buildings against all the secessionists in Maryland. A great reaction has set in. If we now act promptly the day is ours and the city is safe."

For the next month and a half he carried on, without cessation, "the most brilliant campaign against open traitors, doubters and dodgers that unrivaled eloquence, courage and activity could achieve. Everywhere, day and night, in sunshine and storm, in the market houses, at the street corners and in the public halls, his voice rang out clear, loud and defiant for the unconditional maintenance of the Union."<sup>2</sup>

Though defeated in this contest, he never slackened in his efforts nor in his "uncompromising devotion" to the Union.

As a leader of this forlorn hope, at the special election held on June 13, he was defeated by Henry May,<sup>3</sup> the Conservative-Union candidate, with secessionist sympathies, by a majority of 2,048 votes out of 14,621 cast.<sup>4</sup> During the canvass he openly declared himself in favor of coercion of the South, and frankly avowed that he had voted against the Crittenden Compromise, which was preferred by the people of Maryland, because he thought that it was impracticable and imposed terms to which the free States ought not to be asked to submit. The story is told that when the returns of the election were brought him, he interrupted the messenger, who was expressing regret over May's election, with the inquiry: "How many votes did I get?" When he was told he received more than 6,000, he exclaimed: "Thank God. If as many men as that voted for me today, I defy them to take Maryland out of the Union."

In the political campaign during the Autumn of 1861, Davis took a leading part on the Union side, speaking in Baltimore on October 16 in answer to an address from Union men, headed by Johns Hopkins,<sup>5</sup> and at Elkton on October 26.<sup>6</sup> The Baltimore speech<sup>7</sup> is an important one. No one dreamed any more of peaceful secession. Cotton had been shown not to be king, and the Confederate

States had failed to "bring to their knees Great Britain and France" through that product. The Democrats of the North, "subservient for a long generation to Southern dictation," had proven to be patriotic. The Southern Republic had inaugurated "an era of confiscations, prosecutions and exiles," yet the "partisans in Maryland of the men who do these things make our streets hideous with their howl about oppression, and invoke all the principles of the Constitution that their allies have spent now nearly a year in making a dead letter, to secure their immunity here and convert this heaven into their hell." Neutrality had disappeared. "The enemy is at the door, and the people of Maryland know that they who are not their friends are their enemies." "The men with secessionist sympathies have no right to complain. In the face of the mercy of the Government which they perpetually abuse, they insolently meet patient Union men upon the corners of the streets, in their counting rooms and in the parlor, and on the Merchants' Exchange, and wherever men most do congregate, and, while they writhe under the blow that has stricken them down here and taken from them the fruits of their treason, before they could fully enjoy them, their only comfort is to appeal to the future, to promise retribution, to intimate that assas-

sination may cut short those who treat them as traitors; that, if ever they get the upper hand, the lamp-post will be graced by individuals that they name; that they will not be as insanelly merciful as the Government of the United States is; and these things, while they venture to impeach the Government for harsh and oppressive measures."

There was no sign of Southern victory, there was no hope of peace, though some desired it without honor. Davis appealed to the "men of Maryland, who remember that your forefathers thought seven years of war better than peace with submission and degradation. \* \* \* to revive the recollection of those great days and act upon their inspiration." The State had been accused of disloyalty, yet she had never hesitated for a moment, which was more than could be said for any other slave State, except Delaware. Governor Hicks was enabled to "resist the pressing applications for the convocation of the Legislature," because, "knowing the people who had elected him, their temper and their purposes, he felt that, however severe the pressure might be, where one person sought the meeting of the Legislature, there were thousands who stood by him in his refusal to convoke them." At the time of Lincoln's inauguration, "the destiny of the capital of the United States lay in

the hollow of the hand of Maryland." "If disloyalty had lain as a cankering worm at the heart of Maryland, then was her time," for "she could have presented herself before her Southern sisters, dowering them with the capital of the country, and there was no power that could have prevented that gift." The mob of the 19th of April was aroused by the sympathizers with secession, and the Governor, "suddenly smitten by an inexplicable terror," threw himself into the arms of his enemies." "One-third of the people of Baltimore, under the influence of pressure and persuasion and delusion, and a little coercion, elected secessionists to the House of Delegates." Then came the reaction. No county supported the revolution in Baltimore, and the Union men gradually regained the upper hand there. In Cecil, Allegany and Washington counties, stanch Union resolutions were adopted. The Legislature did not dare to put to a vote a bill establishing "a military despotism in the disguise of a bill of public safety." During all of April Washington was at the mercy of Maryland. It would have been at the mercy of the Confederates, had their leaders possessed audacity. Nearly a month after the mob, General Butler, with less than a thousand men, came to Baltimore and found no opposition there. With elaborate sarcasm,

Davis held up to scorn the record at the extra session of the members of that Legislature, who were not the "representatives of the loyal and free men of Maryland," as was proven by the fact that at the Congressional election in June the Union men "cast a great majority of the whole vote of the State." The Autumn had come, and "secession as an active, dangerous and agitating element, now lies writhing in its last agonies in Maryland." At most, "very nearly one-third of the people of the State are disloyal," and "will not take up arms on the Union side." He excused the failure of Maryland to fill her quota of troops as partly the fault of Governor Hicks and partly the fault of the War Department, which "felt small confidence in the Union men of Maryland." Now, however, there was reason to believe that the Administration was convinced of their loyalty, and, under a new Governor and Legislature, Maryland would stand in the foremost rank of States. Davis had voted for Bell, who had proven a traitor, and now rejoiced in Lincoln's election and was "more earnestly anxious" for his success than for any other one who had "wielded power in my day." "This Administration, weak or strong," was the "last and only hope of the American people," and must be "supported, let whatever else may fail, in spite of the contempt



with which it had treated the people of Maryland." The Administration had naturally organized itself "on a strictly party basis," had underrated the importance of securing support from the great central slave States, and had selected generals unequal to the needs of the occasion. Lincoln's policy in the Border States, especially in Maryland, had been conspicuously weak, yet a "straightforward honesty" had "marked his every act." "The policy of the Administration and of Congress in dealing with this rebellion had been eminently liberal. The policy of the people in the rebellious States has been eminently illiberal and barbarous." Lincoln had disowned Fremont's freeing of the slaves. There was no danger of decrees of emancipation, and, consequently, none of servile insurrection. Davis believed that the "signs of the times showed that the wisdom of the Administration was becoming equal to the enthusiasm, the devotion, the liberality with which the people and the States have lavished men and money in the cause of the Republic," and that, with such wisdom, there would be no doubt of the success of the Union. "The misfortune of Bull Run" had "broken no power, nor any spirit;" it "bowed no State, nor made any heart falter;" it "was felt as a humiliation" and taught the War Department that "it requires military

knowledge to lead a host, that it requires months to convert a crowd into an army; that, without artillery, a modern army is nothing, and that, without cavalry, it is a bird without wings; that without the means of following up a victory, victory is worthless." Davis hoped that when the "banner once more points forward, it will proudly advance, until the rejoicing soldier shall, like Xenophon's Greeks at the prospect of the Euxine, after their weary march, greet with the cry of 'The sea! the sea!' the glimmering waves of the Gulf of Mexico." He neither wanted the assistance, nor feared the hostility of foreign powers. "We know that we owe them nothing but good will," but "we rely upon their interests and not upon their love, to let us alone." He had been surprised that the "great despot of Russia" had shown sympathy to the United States and would "accept the courtesy" of his "good wishes," but would "trust nothing to his good will; our fate is in our own hands. We must not merely defeat, we must destroy the army before Washington. That will break the military power of the rebellion, and whenever the sword shall be stricken from the hand which lifted it against the Union, the terrors of despotic power will vanish from the land and grateful eyes will turn

in tears to greet the unforgotten banner of the Republic.”

Davis believed that the constitutional powers of the Federal Government were sufficient for the repression of rebellion, and proclaimed that belief in a speech delivered at Brooklyn in November,<sup>8</sup> 1861. Webster had been dead only ten years, and the institutions whose success he believed would continue to distant ages, were already tottering. Many of the people of the North were even in search of a master, and “are ready to lay their liberty a sacrifice on the altar of victory.” When Webster died, “American liberty looked strong and was boastful of its strength; when President Buchanan left the White House, American liberty was like Herod, eaten of worms beneath his royal robes and ready to give up the ghost. The foundations of the constitutional edifice were already secretly sapped; the mortar was already picked from the stones; and when the judges of the Supreme Court pronounced the Dred Scott judgment the very Caryatids of the Constitution were seen to bend beneath the unusual pressure and the whole edifice seemed, to thoughtful eyes, to rush to its ruin. The sap went on more earnestly, more vigorously,” until “the enemies of the republic thought their day was come; they rushed openly to the assault of the

breach they had been so long and so secretly preparing. Bold men thought the last day of the republic was come. Bad men withdrew to seize their part of the dismembered heritage. Fervid friends gathered round the bed of the dying patient and talked hopefully of peaceful dissolutions, and when rash men whispered with bated breath of coercive remedies, they were put far off, lest the shock of the suggestion might hasten the catastrophe. "Then Sumter was attacked and the nation" rose from its bed of death and cast off its premature grave-clothes and challenged its right to be a nation of history." Men cried for action and were summoned thereto, and in their excitement and lack of acquaintance with the new conditions, "they supposed that laws were meant for times of peace, that constitutions were only to be obeyed in courts of law, that fury might not minister arms." Such principles "ruled the Government in great measure, with the people leading it on and rejoicing over every arbitrary act." No one was more interested in the suppression of the rebellion than Davis, who knew that we "in Maryland would live on the side of a gulf, perpetually tending to plunge into its depths, if the rebellion succeeded." For his hearers it was "greatness, strength and prosperity" to preserve the Union; for the Marylanders,

“life and liberty.” He had no “tenderness for the parricidal hands that have lifted weapons against the heart of the nation;” but, “in their grave,” he did “not wish to see American liberty perish,” nor that the Government should be “driven to the necessity of inaugurating revolution for the purpose of suppressing insurrections.” He objected to the declaration of martial law, to the suspension of the writ of *habeas corpus* by the President’s order, to the suspension of newspapers, to the seizure of telegraph. Davis held that the Constitution vested in “Congress adequate power to suppress the rebellion;” but vested in no one “arbitrary or unlimited powers for that or any other purpose.” If the Constitutional powers of the Government were not sufficient, for the suppression of the rebellion, “the Government of George Washington has failed.” We are then in the face of another revolution, and will be governed by the “law of Julius Cæsar, the law of the master over the slave.” Martial law is excluded from our system, for the Constitution does “not vest authority to declare it anywhere, in any body, under any circumstances.” He went into an elaborate constitutional and historical argument in support of his position, and claimed that, to allow the President to proclaim martial law in accordance with the will of the people, would be to

establish the "democratic despotism" of France, not "American republicanism." It would "cause us to tread the path of the Roman republic and arrive at the conclusion of the Institutes of Justinian, that the will of the Emperor had the force of law." The Constitution had omitted nothing "necessary to carry the republic through this great crisis." The guarantee to the States of a republican form of government makes it "the duty of Congress to overthrow the usurping governments in ten rebellious States," by calling forth the militia to execute the laws of the Union and to suppress insurrection. An ordinance of secession "is so much waste paper." The laws of the Southern States are the acts of a mob, "transcending the limits of their power and flying in the face of the supreme government of the land." Congress must "authorize the President to use the military power of the republic to compel the submission of its enemies" and to inflict such reasonable penalties and forfeitures as will not exasperate and indurate the hostile population." The President is merely the "executor of the laws. He has authority to command the army, when the army exists, but it can only exist by the law of Congress." In the whisky insurrection, Washington regretted the inadequacy of the law, but took no steps outside of it,

and, after the emergency was past, he secured its amendment. That law gave Lincoln authority to suppress the rebellion. Congress had already passed a law providing for the confiscation of property of rebels, used to promote rebellion, and had declared a blockade of the Southern Coast. Congress had also placed a magnificent army at the President's disposal. In a few days Congress will meet again, and may do more. The army must "break down a combination of armed force," and against those in arms in opposition to the Government, the bayonet is "the process of law." The "right to use arms ceases with the necessity of suppressing combinations too powerful to be suppressed by the ordinary processes of law." When the army is assembled, it may rightfully subject the whole territory occupied by it "to the burden of war, at the will of the military authority. It is not a violation of a private right—it is the assertion of the right of eminent domain over the national territory, asserted in time of war by the highest political authority, the Constitution of the United States." He developed this thought at great length, holding that, beyond the needs of the army, private property was as "sacred in civil war as in foreign war, or in peace;" but that Congress may legalize confiscation, not as a right of war, but as a "penalty at-

tached to crime." The right to seize persons in arms, or those who are aiding and abetting such persons, is "involved in the right to use military force;" yet when arrested, these persons may lawfully have the benefit of the writ of *habeas corpus*, until it be suspended by act of Congress. He discussed this point with thoroughness and quoted precedents to justify his position. Yet Taney went too far in his decision in the Merryman case, against which Davis cites the language of the same judge in the case of Luther vs. Borden, to which language he gives high praise. The matter is thus summed up by Davis: "A military arrest of a person engaged in the insurrection is not only legal, but is beyond the cognizance of the courts," which "have no right to inquire into the subject at all." If the writ is issued, the military officer should not produce the prisoner, but "return to the Court the simple fact that the person is held by the order of the President for being engaged in the insurrection," and "if the courts attempt to enforce the production of the prisoner," "it is the legal duty of the officer to resist force," as the arrest was "beyond the jurisdiction of the court." The President, Davis continued, "is to make war for suppression, not for punishment—that belongs to the courts. But within the scope of warlike operations the President,



by the law of Congress, is paramount to the courts."

Davis apologized for his long constitutional discussion, but the "foundation stones of the republic" were "not as polished as the columns and cornices which glitter in the sun," and he felt that it would take "away half of our republicanism to feel that we put down rebels by a violation of the law." He wished "the war to be conducted as a war ought to be conducted, which is to determine the life, and not only the life, but that which is more, the freedom of the American people, the reputation of republican government, its respect, its enduring power, and its influence over the nations of the world." He would "respect and confide in the wisdom, resolutions and uprightness of President Lincoln, but President Lincoln is not good enough for my master. I will trust him with the administration of the laws, but I will not trust him to make them, nor beyond them." He would not add a dictatorship to the President's constitutional powers. Nations of Europe had failed in "their efforts for republican government because they are not habituated to the restraints of law self-imposed," but "it is self-control that is the greatness of the American people. It is obedience to their own law that is their power. It is

because they have declared that their Constitution is the *salus populi*; it is because they adhere to the rule that the written law is the voice of the people; it is because they appeal from the hour of passion to the day of calm reflection, that they have proved themselves worthy of the liberty that their fathers conquered for them."

The campaign resulted in the election of a Union Governor and Legislature. To one of the young members of the House of Delegates, the Hon. John V. L. Findlay, Davis wrote a characteristic letter in January, 1862:<sup>9</sup> "I think you have a fine opportunity for distinction and a flattering prospect of distinction, if you use the opportunities and abilities you have with diligence, prudence and, above all, with absolute fearlessness at any or all consequences. Cowardice of mind is the curse of American politics, and the first condition of success is to know that victory cannot be won unless at risk of defeat, and he who is unwilling to be shot should not aspire to military glory."

It is not surprising that Davis was urged for the United States Senatorship, and that, as a candidate of the radical element of the Union party, he was a strong competitor of Reverdy Johnson in the caucus during March, 1862.<sup>10</sup>

About this time we find such traces of Davis's activity as an occasional letter about a political prisoner;<sup>11</sup> or an appearance in a court-martial.<sup>12</sup> He kept close watch upon the proceedings in Congress, as is shown by the letters he addressed his friend, Hon. Justin S. Morrill, then a Representative from Vermont, on June 6 and 15, 1862.<sup>13</sup> Carefully he distinguished between a bill of attainder, a "law performing the office of a judgment," rightfully forbidden Congress, and the proposed Confiscation bill. The former placed a "person just where a conviction and judgment of a court places him, nothing remains but execution." Bills like the latter "name no particular persons; therefore, they punish nobody. They declare that certain acts committed after their passage shall be punished by confiscation," while a "bill of attainder relates to the past." These proposed bills do not make the forfeiture dependent on a previous conviction for treason, and so contravene no constitutional provision concerning that crime. "It would be gross error to say that one can be deprived of liberty or life, otherwise than under criminal prosecution; for then the President has murdered many men in the field and enslaved many men in the military prisons. For men in arms, a bullet is due process of law; seizure by military

power is due process of law; they are not convictions, nor trial, nor punishment of the persons; they as assuredly deprive them of life or of liberty as a conviction and a sheriff, and they are just as legal as conviction and hanging." Taxation, also, deprives the person of his property, not by judicial process, but by an administrative process, yet it is a process of law essential to the existence of the Government. The revenue laws of the United States have always provided for forfeitures without a jury for illegal acts, "irrespective of the conviction or prosecution" of the guilty person. The navigation laws, the laws prohibiting the sale of liquor to Indians, the statutes for suppressing the slave trade, "abound in pointed illustrations," and the last-named statutes "are of special interest in relation to the confiscation of the slaves of rebels." "Slave property is the pretext of the rebellion and the chief instrument by which the revolutionists have coerced submission to their will. Sound policy requires that a weapon of such power be broken or wrested from the hands of the enemies of the Government." The "necessary form of confiscation is emancipation," but the "release of the Government's title in the slaves confiscated is not to be confounded with a prohibition against holding any slave in the State." The care with which the punishment

of treason was hedged about by the framers of the Constitution shows their "desire to exclude political persecution," but does not deprive the Government of the power to punish the "acts which amount to treason under other names and free from those restrictions." Thus "the traitors who burned the Maryland bridge and shot the Massachusetts men on the 19th of April were guilty of treason, but they were also guilty of resisting the laws of the United States, and of a riot, and of obstructing mail routes, and for any of these crimes "may be punished, without the limitations placed on treason."

The second letter added to the illustrations of the power to confiscate slaves by emancipation, the laws of the United States in the District of Columbia, which "prohibited the importation of slaves for sale or residence, declared the slave imported free, and punished the importer by fine." These laws were adopted from the laws of Maryland and Virginia. Davis himself had "in more than one instance successfully asserted that claim" of freedom "before the courts of the District and of Virginia." The Compromise Acts of 1850 embody the same principle. "The process for enforcing the freedom of the slave was by suit in the name of the negro against the owner for freedom, in the form of an ordinary action for

trespass, and the title to freedom was vested by operation of law, immediately on the consummation of the act of forfeiture, and the suit was merely the judicial form of authenticating the title the law had vested."

In the political campaign of 1862 Davis spoke on October 30 at Newark, New Jersey,<sup>14</sup> especially attacking the peace party. He told his hearers that the Confederates in arms "will defy you; disarmed, they will beg for terms. But there are persons who are opposed to waging a war of subjugation." To such Davis replied that if the South "shall persistently refuse to accept the benefits of free government under the Constitution of the United States, then this question is presented to us. If men perversely refuse to govern themselves under our laws, whether we shall, therefore, sacrifice our nation and our independence, permit anarchy because of their refusal, or govern them by law?" To this trenchant query he answered that "I have no hesitation in saying, just what meaning you place on subjection, that their subjection is my freedom."

Threats had been made that the army would rebel if McClellan were removed from command, and the Democrats said "that they alone can carry on a successful war." In reply, Davis pointed to Harrison in the Indian warfare, to Scott in the War of 1812 and the Mex-

ican War, and to Taylor in the latter war. The failure of the troops was due to Democratic leadership; "slowness is not the way to prostrate this rebellion." For that end the audacity of Taylor is needed. The Democrats cried out against the suspension of the writ of habeas corpus, which had been put into effect in Baltimore by Generals John A. Dix and Wool,<sup>15</sup> both Democrats; while Lincoln, in suspending the writ, merely followed in the footsteps of two Democratic leaders, namely, Jefferson in Gen. James Wilkinson's case, and Jackson at New Orleans. After all, "all such hue and cry was a sham." The Democrats "mean to stop the war." They refer to acts "illegal and unnecessary and hereafter to be rebuked, but which can not *now* be rebuked without endangering the public cause and the safety of all."

They complain of the abolition of slavery in the District of Columbia, but do not propose to re-establish it. They complain of the emancipation proclamation as tending "to disturb and overthrow all the foundations of society in the Southern States." Davis replied that we are not bound "to prevent any such disaster, which they, the rebels, alone have rendered possible." If the extreme charges of the Democrats against that proclamation are true, "it is an unconstitutional act that

hurts no loyal State," and "its illegality does not touch any man in any State not now in rebellion." "If the proclamation is to be effectual," however, "it must have the force of law," and Congress, at its coming session," should "recommend the adoption of an amendment to the Constitution declaring that no State shall tolerate slavery within its borders, extinguishing slavery throughout the United States, with a provision for compensating the owners in loyal States." On the ratification of such an amendment "you will have gone to the root and core of the matter."

Davis also favored a confiscation bill that should "touch the lands of the leaders of the rebellion, not for life, but in the fee simple," and a distribution of those lands to the "negroes who shoulder the musket." Colonization in Liberia "is an impossibility, and, if it were practicable, it would not be desirable. The lands in the Southern States must be cultivated, and the negroes will remain there and will have to cultivate them."

In his peroration he urged the people to go on, "with that indomitable resolution never to submit, or to be content with anything less than the subjugation of rebellion, the defeat of rebels, and the victorious maintenance of the whole republic."

In February, 1863, Davis and his friends



began an active political movement in favor of emancipation in Maryland. It was necessary to elect a Legislature in the fall of that year which should be favorable to submitting to the people of the State the question of calling a constitutional convention, which convention, when called, should submit to the people a revised Constitution, abolishing slavery. In the midst of the political campaign came the battle of Gettysburg. On the morning of July 5 Charles Carleton Coffin, the war correspondent, entered the Eutaw House, in Baltimore, and told Elihu B. Washburne and Davis that: "We have won the greatest battle of the war. I have been all over the battlefield, and the rebels are in retreat." In his graphic phrase: "The next moment Washburne and Davis were hugging each other," in the relief from the great strain.<sup>16</sup> J. A. J. Creswell was Davis's chief lieutenant in the movement, and Davis made a vigorous campaign throughout the Eastern Shore, where Creswell was the successful Union candidate for Congress. As Davis had no opposition to his own Congressional election in the Baltimore district, he spoke for Creswell and emancipation at Elkton on October 6, at Towson on the 15th, at Salisbury on the 24th, at Snow Hill on the 27th, and at Baltimore on the 28th. The election in November resulted in the choice of

a Legislature pledged to call a Constitutional Convention.

In the important campaign of 1863 Davis did not limit his efforts to Maryland, but also spoke at Philadelphia on September 24.<sup>17</sup> In his judgment, the election of a Democratic Conservative President would end the war and also the Union and the movement for negro freedom, "the great result, though not the original object of the war. If men favor the continuance of the conduct of national affairs in the hands of the Republicans, the continuance of the war until every rebellious weapon sinks in submission to the national authority," and the abolition of slavery, they must vote for the Republican candidates in Pennsylvania. The Democrats declared that they "alone can restore the Union," that it "can only be restored by peace and conciliation." Davis asked the piercing question: "They were in power when the rebellion broke out. Why did not they arrest it?" They could have prevented the election of Lincoln. "Why did they not subordinate their internal party differences to the patriotic purpose of averting an otherwise inevitable war? They say that they alone can restore the Union, and by peace. Then, why did they break it up? They are very fond of asking who is responsible for the war, and I take great pleasure in

responding, the Democratic party, that ruled the country for thirty years." The war Democrats heartily support Lincoln, and "they who now arrogate to themselves the reputation and the name of the Democratic party are the mere refuse that remained behind when the patriotic elements withdrew for the defense of the nation." When it included the War Democrats, that party could "not prevent the war. Who will believe that this wretched remnant can stop the war? Why did the South rebel? Because they had lost the majority of the North." The rebellion is merely the "Democratic party in arms in the South and in sympathy in the North. What Democrat does not sympathize with his Southern brethren?" The Democrats opposed the war "in its beginning; they have maligned it to the present day; they have embarrassed its progress; they have villified those that conduct it; they have struggled against every measure essential to its conduct. Place them in power, would they not effectuate their own purpose and let it drop? Of course, peace is their policy." "In each Legislature which they have elected, the cloven foot has appeared. No great leading man, calling himself a Democrat and not now supporting the Administration, vows himself in favor of prosecuting the war to the bitter end, till the banners of rebellion trail in the

dust." The Confederates are unwilling to give up the struggle. An armistice would be given only "to argue with maniacs, to debate on the field of battle, or to realize the darling idea of the Democratic disunionists, to palsy the arm of the United States, to arrest the impetus of its onward advance, to give the people in rebellion time to breathe, the men stricken to the knee, time to gain their feet; the men whose resources are exhausted, an opportunity to replace them, to break up the blockade, to open their ports to foreign commerce, to give them the recognition that could never be withdrawn, not merely of belligerents, but of parties holding a position competent to deal on equal terms with the United States." The Democrats were really, "in plain English, opposed to the farther conduct of the war," and had "attempted everywhere to elect disloyal Governors, pledged to embarrass the United States in the enforcement of the laws."

Maryland and Pennsylvania have a "common interest in this great struggle," for the Mason and Dixon Line, "that so long has been of ill omen, was abolished by the day of Gettysburg" and Maryland is about to give up slavery, the "only mark of disunion between the States." The common interest of both States lies "in filling up the depleted ranks of the Army of the Potomac. Whether the Gov-

ernment see it or not, from the beginning of the war to this day, there has been but one decisive point upon which one decisive battle could end the war, and that has been Virginia. It has never been a question of marching to Richmond; it has been a question of dispersing and destroying the army of General Lee, and that has never been difficult to find. What the Government has needed is a singleness of purpose, bending its unbroken energies to the annihilation of that army, and with it would crumble the Southern republic. Victories on other points are victories of detail; victory on that point is decisive, final and overwhelming. Peace will follow the destruction of that army; the war will endure until that army is destroyed." "The war drags its length along now, because a Presidential election is only a year off, and the rebels of the South count on having their friends in office." Davis felt convinced that "the way to peace is over the battlefield, and there is no other path." There are four millions of slaves in the South, and they should be armed against the "oligarchy of slaveholders." The emancipation proclamation "confers no title; it can only be made a title by arms." Washington, Jackson, Perry, Barney at Bladensburg, Banks at Port Hudson, Gilmore at Fort Wagner, bore testimony to the negro's usefulness as a

soldier. "Men are men, in spite of their skin and deeper than their skin." Davis believed that no court of law would hold the emancipation proclamation "a valid title to freedom," and that it must be followed by "a law of Congress and arms." The idea of colonization of negroes must be discarded. "Make up your minds, gentlemen, that if they are to be soldiers, they are to be freemen, with the rights of free laborers, protected by the laws, recognized by the United States in their position, guaranteed the remedies of the courts of the United States and armed and drilled to make their rights effectual." This can not be done on the restoration theory of the Democrats as to the Southern States. The "Union as it was" would restore West Virginia to Virginia and surrender the Union men in Kentucky, Tennessee and Missouri to the rebels. The American people are not "ready for such a restoration as that." "They delude the people with vain words when they speak of the Union as it was. Call the dead to life; clothe his bones with his dissolved flesh; restore the soul to the soulless eyes of the thousands who have fallen martyrs upon the battlefield, and then you can restore the Union as it was. The attempt is to begin a new civil war." Davis went on to discuss the other part of the Democratic war-cry: "I am for the Constitution as

it is, and that has altered the Union as it was, and it will stay altered until eternity. And when I speak of the Constitution as it is, I mean as it came from the hands of George Washington, Alexander Hamilton and James Madison—adequate for every contingency of national life, speaking so plainly that those who run may read and only the perversely blind can misinterpret. Aye, the Constitution as it is, which says that Congress may call forth the militia and use the armies of the United States to suppress insurrection and, therefore, the war is constitutional, according to the letter of the Constitution as it is. That Constitution says that Congress shall guarantee to every State a republican form of government, and it is under the Constitution as it is that the armies now march to remove oppression and restore republican liberty. And it is the Constitution as it is which declares that Congress shall have a right to pass all laws necessary and proper to carry into execution all the powers vested in it or any other department of the Government, and, therefore, whatever Congress may think, in its judgment, is necessary to restore and guarantee republican forms of government in the rebel States, that law, according to the Constitution as it is, Congress may pass." One can hardly state the Congressional plan of recon-

struction in clearer form, and there is no wonder that one holding such views came into conflict with Lincoln, ere many months had passed. Lincoln's suspension of the writ of habeas corpus was, at best, of doubtful constitutionality, but Congress had now suspended the writ and placed the "matter on the just basis of law. Rational men will yield obedience to it. None but traitorous conservatives will continue to howl against it. Every loyal man knows the President will not use it for oppression."

Congress ought to have taken up the reorganization of the Southern State governments at the last session; for, the sooner the "grounds upon which we act are ascertained, the better for all parties." We must not "speak of the Southern men in arms as alien enemies," for to do so is to admit that "their secession was effectual, to give them the right of independence in the eyes of the world. I say they are traitors and not enemies, citizens under the law, against which they are illegally waging war, not foreigners waging a war upon equal terms with men who are foreigners to them. They war with the rope around their necks." When the rebellion shall be suppressed, the Southerners will not be a "conquered people," nor are the States, "by rebellion, extinguished" so as to become Territo-



ries." The States are "continuing, perpetual elements of our Union, and their citizens "are always beneath the Constitution." But Davis held that there was a "marked discrimination between the individual rights of the citizens—the existence of the State as a body politic and its capacity, by reason of its want of organization, to exert its political powers. If a man in South Carolina comes to Philadelphia, no lawyer can plead alien enemy to his suit. When the opposition is dispersed, then the reign of the courts is restored and the day of punishment may come. But, with reference to their political franchises, the wisdom of our forefathers has placed them a step farther off. There can be no electors of President from any State, unless there be a government organized in it, recognized by the Government of the United States, whose officers have sworn obedience to the Constitution of the United States." The present Southern State officers had not carried "their territory from beneath the laws of the United States," but had "torn down" "their own State governments and instituted others." "They are a band of traitors, usurping rights over citizens of the United States. The armies of the United States move to strike that power from their hands and restore it to loyal men, and in doing that the only arbiter of what govern-

ment shall be recognized, the only arbiter of who shall be treated as Governor, or a legislator, or a judge of a rebel State, is the United States in Congress assembled. Till they shall recognize another government, there is no government." In the absence of a State government, there must either be anarchy or a legislative and executive power somewhere. "Those that have abdicated can no longer be the government of the State. The right and duty to guarantee a republican government is vested in Congress. Congress is, therefore, charged to take every measure that is necessary to restore republican government. Pending the interregnum, Congress is the only legislative power for that State, the President is the only executive power for the State." In Virginia the administration had already applied these principles to the circumstances. The emancipation proclamation would not stand against the wishes of the seceding States, when once they should be reorganized, nor did Davis believe that the "Supreme Court of the United States will recognize it as law," but "it can be helped by an Act of Congress in the execution of its guarantee of republican government, if it consider that the continuance of these men in slavery and the power of the masters over them is incompatible with a permanent consolidation of republican institu-

tions in the States. That is a political and not a judicial question," and on such questions the "courts of the United States will follow the judgment of Congress and the President." "It is frivolous," Davis continued, "to say that we can arm a million of men to prostrate half a million in the dust, taking away precious life to restore republican government; but we cannot restore freedom to slaves in the same cause. Life is protected against illegal aggression in the Constitution, as well as property. Life is not less sacred than slavery. Can we destroy life to repel from power those who have usurped a power to create unrepudican forms of government in the rebel States, and are we to be told that the power of Congress is limited with reference to that species of property—that it must stand a perpetual obstacle to free government?" That is to adopt the strict construction of the "rebellious faction, that by coalition with Northern Democrats, has governed the country to its ruin for 30 years." They have always been in favor of tying the Government of the United States hand and foot, because they saw that it had strong feet to trample down rebellion and long arms to reach it." The "barriers thrown up to protect the institutions of slavery," in Davis's eyes, were "the deliberately prepared bulwarks for a premeditated rebellion."

“When we are done with the rebellion, there will be no governments, even in form, to recognize in the slave States. Their people will “form a State without a political organization.” Such organization they “can only receive under the auspices of Congress and in accordance with the forms and by the laws that it, and it alone, shall see fit to prescribe.” Our forefathers wisely foresaw that a great rebellion might arise, “and, therefore, they created the power to suppress insurrection and imposed the duty on Congress to guarantee republican government.” Here we have no struggle between poor and rich, forming a revolution difficult to deal with, but a foundation of revolt which is a “social institution—the right by law, contrary to the law of nature, for one man to hold another in servitude. You cut up the roots of the rebellion by striking the shackles from the slave.” The slaves had properly been called out as soldiers and no ill results had followed. The Border States were emancipating slaves. “In Maryland, that surrounds your capital and more than once had felt the tramp of the invaders—such is the unanimous sentiment of her people that her Governor has been compelled to hasten up his lagging opinions and proclaim himself in favor of emancipation, and a convention next year to effect it; and the only question is

whether the enlistment of negroes will leave any to emancipate?" The mass of freedmen had shown wonderful quiet and there had been no servile insurrections. We must not call negroes into the field and abandon them afterwards to slavery. An Act of Congress freeing the negroes in the revolted States, will place "four millions of people in the rebel States, whose liberty depends upon the perpetuity of the Union, and for the first time you will have a guarantee such as you never had before." Some raise the cry of the danger of negro equality. "In the first place, if anybody is afraid of negro equality, he is not far from it already; in the next place, if God has made him equal, and only incidental circumstances have made him unequal, you cannot help it; and if He has made him unequal, you cannot help it; and if He has made him unequal, by the laws of nature and independently of the accidental circumstances, then no amount of demagogism, no amount of abolition enthusiasm, can make one hair black or white or add an inch to his stature, intellectual or moral." You cannot expel the negroes, for the ships, the land to receive them, the money to remove them, the persons to supply their places in the South, all are lacking. There is little danger of their removing to the North. In Maryland "we find that the slaves

are lazier than the free negroes." "No rebel State will vote to emancipate their slaves," but they will gladly keep the negroes as freedmen, if the choice lies between that and losing them altogether. If the rebels be allowed to retain power, the Union may be restored, but "it will be at the loss of all the fruits of the war; there will be no permanent peace." He urged that the Union armies, which already "gird all the rebellion, press forward only a little more, and with one combined and energetic effort end the war in another year." "It is tenacity, it is endurance, it is patience, it is the resolution never to stop fighting until your enemy yields, that constitute the great qualities of nations born to rule. We are on trial before the nations of the world. Every despot in Europe curled his lips when the rebellion broke out, at the feeble, wretched, vacillating, dilapidated government that undertook to restore its authority over this immense and magnificent region." Napoleon III sent troops to Mexico when our fortunes were at low ebb, and his actions, as well as those of England in permitting "the sailing of the Alabama and the Florida," and in many other ways, "fester and rankle till the day of account." Davis even incited his hearers to a future war with France and England, and closed his speech with an expression of a hope that Admiral

Dupont might take London. Rodomontade one may say, yet it was the earnest thought of many sincere persons at that time, which thought, had Napoleon not retired from Mexico and England agreed to arbitrate the Alabama claims, might well have led to a terrible struggle.

In New York City, Davis addressed a large meeting in the Cooper Union<sup>18</sup> on October 9. In urging a vigorous prosecution of the war, he especially opposed the so-called "Peace party" and maintained that there was no lawful government in the rebellious States which the Federal authorities could recognize. When the armed opposition should be swept away, Congress must reorganize those States and establish a republican form of government there. He prophesied the success of the movement for emancipation in Maryland, favored the enlistment of negro troops, and reminded his hearers that "they served in the ranks of George Washington and Andrew Jackson." Although he had "never sympathized with the radical Abolitionists" and "thought them one hair's breadth this side of craziness," yet in this emergency, when the "nation is on the point of triumph" and "when the only thing that fires the Southern heart is the Opposition" in the North, he felt that the man who revives old prejudices, or "who now

utters a word for the purpose of awakening prejudice against any man on the side of the Government, is either a traitor at heart, or so low in intelligence that he does not know the consequences of his acts."

Three days later a dinner was given at the Astor House by prominent gentlemen of New York City in honor of the Russian Minister and of the Russian Admiral Lisovski, commanding a fleet then in New York harbor.<sup>19</sup> Russia had been the only European power effectively to show a friendly disposition towards the United States, and advantage was eagerly taken of the visit of the Russian fleet to show an appreciation of that friendliness. Davis was requested to respond to the toast, the President of the United States, and in replying thereto bore testimony, with pleasure and heartiness, to the "earnest uprightness of purpose and far-seeing sagacity with which, in matters more gravely complex and weighty than this nation since the Revolution, had ever been called upon to deal with," Lincoln "has discharged his high duty." The toast had stated that the nation was "solving the problem of self-government and universal freedom," but Davis asserted that that problem had been solved and the day of experiment had already passed. He referred to the hostility of England and of France. In his clos-



ing paragraph he stated that "history will show no example of an equal struggle" to the Civil War, "within the limits of any one nation, met with equal power, sustained with equal endurance, crowned with equal success, promising equal triumph, with that in which we are engaged." After these bold words the speech concluded with a graceful reference to the fact that Russian serfdom "has vanished like the morning clouds" before the recent imperial ukase. It was a curious irony of events which gave the author of the Warfare of Ormuzd and Ahriman, and of the Davis-Wade Manifesto, the duty of making such a speech.

## NOTES ON CHAPTER VIII.

1. Speeches and Addresses, XXV.
2. Creswell, Speeches and Addresses, XXVI.
3. On the disunionist position of May, see Congressional Globe of July 18 and 20, 1861, and War of Rebellion, Off. Recs., 2nd Series, vol. 2, p. 780.
4. 3 Scharf, Md., 433.
5. At this meeting Job Smith presided.
6. Moore's Rebellion Record, vol. 3, p. 58, and Supp., vol. 170.
7. Speeches and Addresses, 224.
8. Speeches and Addresses, 258.
9. Quoted by Capt. H. P. Goddard in *Baltimore Sunday Herald* of March 8, 1903.
10. (Steiner's Reverdy Johnson, 57.) Judge George M. Russum told Capt. H. P. Goddard (vide *Baltimore Sunday Herald* of March 8, 1903) that he went to Annapolis to try to secure Davis's election, and was told that a fund of \$25,000 would

ensure success. He told Davis this, and the latter indignantly replied that he would not give one cent.

11. He asks for release of W. Wilkins Glenn, proprietor of the *Exchange* newspaper, as did Montgomery Blair and Reverdy Johnson. War of Rebellion, Off. Recs., 2nd Series, vol. 2, p. 780, September 28, 1861, and asks that George Dent's case be examined, expressing no wish for his discharge, op. cit. p. 872, December, 1861.

12 E. g. with Milton Whitney, as counsel for Col. James Badger, of the Quartermaster's Department, who was tried at Annapolis in June, 1863, for fraud in buying coal for army.

13. Speeches and Addresses, 292.

14. Speeches and Addresses, 302.

15. Gen. John Ellis Wool (1784-1869).

16. Coffin's Lincoln, 379.

17. Speeches and Addresses, 307.

18. Speeches and Addresses, 341.

19. Speeches and Addresses, 338.

## CHAPTER IX.

THE THIRTY-SEVENTH CONGRESS  
AND THE STRUGGLE WITH  
LINCOLN (1863-65).

In the Spring of 1863 Davis decided again to be a candidate for election to Congress, and, fearing that Lincoln "might be inclined to favor unduly the Conservative candidate,"<sup>1</sup> sought an interview with the President. As a result of this interview, Lincoln wrote Davis a letter on March 18, stating that "there will be in the new House of Representatives, as there were in the old, some members openly opposing the war, some supporting it unconditionally, and some supporting it with *but*s and *if*s and *and*s. They will divide on the organization of the House—on the election of a Speaker. As you ask my opinion, I give it—that the supporters of the war should send no man to Congress who will not pledge himself to go into caucus with the unconditional supporters of the war and to abide the action of such caucus and vote for the person therein nominated for Speaker. Let the friends of Government first save the Government, and then administer it to their liking." Lincoln's lukewarm and somewhat Delphic utterance<sup>2</sup> was courteously received by Davis, who replied, two days later,

that Lincoln's letter "will greatly aid us in bringing our friends to a conclusion such as the interests of the country require." The campaign, which ended in Davis's election, was a long and doubtful one. On October 12 Judge Hugh L. Bond wrote Secretary Stanton that, in view of the canvass, he hoped the draft and the enlistment of negroes in Maryland might be postponed until after the election.<sup>3</sup>

Dr. Hosmer writes<sup>4</sup> that of the new men in Congress in December, 1863, "perhaps the most brilliant was Henry Winter Davis, of Maryland, whose ardent unionism had operated powerfully to save his State from secession, and who, though, before the war a supporter of John Bell, was opposed to the conservatives and a promoter of the war. His powers were conspicuous, and the highest anticipations were entertained of his eminence as a statesman, blasted two years later by his premature death."

When Congress met, on December 7, the Clerk had not placed the names of the Maryland members upon the roll; but, in spite of some protests, the House, by the vote of 94 to 74, ordered them put there. Davis at once had some Missouri representatives added to the roll, but his first important action, forbidding what was to follow, was the substitute

which he offered to Thaddeus Stevens's resolutions concerning the President's message. Davis moved that "so much of the message as related to the duty of the United States to guarantee a republican form of government to the States in which the governments recognized by the United States have been abrogated, or overthrown, be referred to a select committee of nine, to be named by the Speaker, who shall report the bills necessary and proper for carrying into effect the foregoing guarantee." This was the entering point of the wedge between the Presidential and Congressional plans of reconstruction. Stevens did not object to the change, which was carried by a vote of 101 to 80. Davis claimed that the original resolution "intended to point to what, in the very inaccurate phraseology of the day, is known as reconstruction," and continued thus:

"Now, as I think there has been no destruction <sup>6</sup> of the Union, no breaking up of the Government, I carefully avoid the use of any such word. The fact, as well as the constitutional view of the condition of affairs in the States enveloped by the rebellion, is that a force has overthrown, or the people, in a moment of madness, have abrogated the governments which existed in those States under the Constitution and were recognized by the United

States prior to the breaking out of the rebellion. The Government of the United States is engaged in two operations. One is the suppression of armed resistance to the supreme authority of the United States and which is endeavoring to suppress that opposition by arms. Another—a very delicate and perhaps as high a duty—is to see when armed resistance shall be removed, that governments shall be restored in those States, republican in form.” Davis wished to limit the investigation of the committee to the latter question, and had not intended to instruct the committee to report any particular measure. He was made chairman of the committee, and began work at once. On January 18, 1864, he asked to be allowed to report from this “select committee on the rebellious States” a bill to guaranty them a republican form of government and have the bill made a special order. He failed to get the two-thirds vote needed for this. A few days later his own position was exhibited<sup>7</sup> in the debate on an election case, when he said that there was no legal authority to hold any election in Louisiana, and that any attempt to hold an election therein was an usurpation of sovereign authority, which was properly forbidden by the military authority.<sup>8</sup> On February 10 he moved that the credentials of men who claimed election from Arkansas

be laid on the table, but six days later withdrew the motion, as he did not wish to show "an illiberal spirit," nor raise an issue with Dawes, of Massachusetts, who was advocating their admission. Because, however, it was not a mere question of election law, but the recognition of a State government was involved, he was not willing to have that recognition passed upon as a collateral matter. Credentials were "presented, not signed by any officer of any State government known to the United States. There is a rebel Legislature in Arkansas—is there any other? If the contestant does not come under that Legislature," which, we say, "is a body usurping the authority of the United States and merely a collection of rebels, having no legal authority," whence does he come? There is "no State's government in the State of Arkansas recognized by the laws of the United States and that appears to this house, in intendment of law, or in point of fact." To accept these credentials was to assume such a government. Davis wished a direct vote upon that question, to see if the House "will recognize as a government this thing organized without any authority of law, without the supervision of any official authority, organized merely under the dictation of a military commander." It would be unsuitable to permit the Committee on Elections to take jurisdic-

tion of the question of the existence of a State government, yet recognition of the government is a condition precedent to the election of a member therefrom. "If we recognize a government in Arkansas and the President refuse to recognize it, in what condition are we? If the Senate recognize a government and we fail to recognize it, in what condition are we? Or, to take the other case, if the President, under the pledge given in his proclamation of the 8th of December, 1863,<sup>9</sup> shall see fit to recognize it as the government of a State and to treat it as entitled to the guarantee of the United States, and if this House, or both Houses of Congress refuse to recognize it, where are we? Can there be a recognition of a State government which does not unite the suffrages of all three political departments?" If the electoral vote from a disputed State will decide a Presidential election, who is to be the judge of its validity? "If we are willing to say that State governments exist in all the rebel States, though the war is waged against us by their authority, then we take one view of the subject. But, if the States have ceased to exist, if the fact of their rebellion has destroyed their relation to the United States as governments, that is a political question to be determined by the President, by the House of Representatives and by the Senate



of the United States. Neither one of the three, nor any two of the three can determine it." Davis saw the dangers of divided opinion, which might even lead to a civil war for the Presidency, and, therefore, he moved to lay the papers on the table. He stated that "the President has called on General Banks to organize another hemaphrodite government, half military, half republican, representing the alligators and the frogs of Louisiana, and to place that upon the footing of a government of a State of the United States." Arkansas had thrown off her allegiance and defied the authority of the United States. "I think that the State of Arkansas is not extinguished. I think that no citizen of Arkansas has lost any personal privilege of citizenship, nor have they withdrawn from any responsibility to the Government of the United States. A State should exist with a government. The Constitution of the United States assumes that, when it compels Congress to guarantee a government. The rebel government in Arkansas is a military government, and, therefore, not a republican government, and the United States is now engaged in removing it. When it is removed there will be no government in point of fact, as there is none in point of law. Today the condition of Arkansas I take to be this: Mere political privileges depend upon her or-

ganization of a State government, and not upon the fact of her being a State. Without her Legislature, there are no electors entitled to vote for Congressmen." "A man may live, but without arms he can not well work, without legs he cannot well walk. The substance of the man is there, but the faculty of action is gone. It is the paralyzed condition in which the rebel States now exist." The "constitution of Arkansas is now, by the mere effect of the rebellion, absolutely dead and incapable of revival, except by a revolutionary process." The Constitution uses not the word *may*, but *shall*, in the guarantee clause, so that it is not merely a right, but a duty, for Congress. "They are bound to see that it is not merely a mushroom growth, under the dictation of a military commander, or of the President's proclamation. Arkansas is in the Union, so far that we are bound to see that nothing which has the form, without the substance, of government shall control her citizens, that the loyal men of Arkansas cannot be governed by traitors, who call themselves the Legislature of Arkansas. If the people of Arkansas have taken steps to organize a government and, upon investigation, we shall be satisfied that what they have done fairly represents the masses of the people of Arkansas and that the thing called a government is one

to which we can intrust the interests of the people of Arkansas and the government so organized is one which we can say shall be obeyed and which we are ready to commit ourselves to enforce compulsory obedience to, then I will consider the questions of election law involved in this case. But it must not be done by this House alone; it must not be done by the Senate alone; it must not be done under the proclamation of the President, which so far as it is anything more than a State paper, is a grave usurpation upon the legislative authority of the United States. It must be done by the concurrence of the legislative and executive powers, and without that it is nothing. I cast no imputation upon the faith of the President. I impeach very seriously the legality of his proclamation.”<sup>10</sup>

On January 14, 1864, when the bill to confiscate the property of rebels was under discussion,<sup>11</sup> after S. S. Cox, of Ohio, had spoken in opposition thereto, Davis sarcastically remarked that it was fortunate that the Administration had been placed beyond the necessity of relying upon the support of Cox, who had promised to give it to all proper measures for “suppression of the rebellion.” The opposition had been sent to Congress to “oppose, to embarrass, to libel and break down the Administration,” and, “when they tender sup-

port," Davis looked "at it with something of suspicion." It was the "settled, resolved policy of the Administration" to confiscate the property of "some portion of the people engaged in the rebellion." Davis agreed with the wisdom of this policy, though he would confine the effect of the confiscation "to a few of the leaders," and he felt that the bill abolishing the limitation of the operation of such confiscation to life estates was a wise one. It had been argued that, to pass such a bill was a violation of the Constitutional provision that "no attainder of treason should work corruption of blood, or forfeiture, except during the life of the person attainted." This provision, Davis showed, did not apply here, for there was no attainder, and the Constitution limited in no other way "a forfeiture of the whole fee in lands."<sup>12</sup> There being no attainder, the only question was whether the bill proposed to confiscate property without due process of law, and a long line of precedents supported the proposition that such a judgment of confiscation could be inflicted *in rem*. The revenue law of 1799 forfeited property brought in under fraudulent invoices, the navigation laws, and the laws against the foreign slave trade provided for the forfeiture of vessels, without regard to any proceedings against masters or owners, ardent spirits carried

among the Indians are forfeited, and in Virginia and Maryland the statute book long provided that negro slaves introduced from any other State and from foreign countries should be free. In Davis's legal practice in Alexandria, in Washington, and in Baltimore he had frequently known cases arising under these laws and found that "the law vested freedom; the court authenticated it," while an appeal to the United States Supreme Court proved the validity of the law, "forfeiting the master's right of property, but not indicting him of crime." The law for the abolition of the slave trade in the District of Columbia in 1850 contained a similar provision, and the "traditional laws of the republic" settled it that the "United States Government can say that those who have been in arms against it shall forfeit their property and that the tribunals of the country shall enforce it *in rem*."

Early in the war, Davis perceived the importance of providing for the reorganization of the seceding States. During the Thirty-seventh Congress Davis, who was not then a member of the House, prepared a bill for this purpose, which bill provided a "complete guarantee to the people of the insurrectionary States that, upon certain conditions, these States might resume their place in the Union when the insurrection had ceased." He hand-

ed John Sherman the bill, and the latter introduced it and had it referred to the Judiciary Committee, which never reported it.<sup>13</sup> The subject was, therefore, one upon which Davis had long pondered.

On February 15, Davis, on behalf of the Committee on rebellious States, asked consent to have a bill printed and, reporting it, had it read twice. A month later,<sup>14</sup> when the House had refused to recommit this bill,<sup>15</sup> Davis made an eloquent speech in favor of it.<sup>16</sup> The preamble of the bill, as first introduced, is important, since it contained the Congressional theory of reconstruction in its earliest form.<sup>17</sup> "The so-called Confederate States are" described as "a public enemy, waging an unjust war, whose injustice is so glaring that they have no right to claim the mitigation of the extreme rights of war which are accorded by modern usage to an enemy." As a result of this condition, "none of the States which have joined the so-called Southern Confederacy can be considered and treated as entitled to be represented in Congress, or to take any part in the political government of the Union." Although this proposed preamble was not adopted, it showed Davis's position. The bill provided for the appointment of a provisional Governor in each rebellious State in which resistance ceased, and for an enrollment of

white male citizens. When a majority of these should have taken an oath of allegiance, they should elect delegates to a convention, which must insert in the constitution it prepared provisions preventing any prominent civil or military officers of the Confederacy from voting for or becoming Governor or member of the Legislature; prohibiting involuntary servitude, and declaring that no debt, State or Confederate, created by or under the sanction of the usurping power, should be recognized. After a Constitution had been framed by the convention and ratified by the voters, it should be certified to by the President, who should, by proclamation, recognize the government established thereunder as that of the State, and after these events members of Congress and electors might be chosen from that State. During the provisional period, the laws of the United States and of the State before the rebellion should be in force. All slaves were emancipated in these States, and the Federal courts must discharge them by *habeas corpus* writs and inflict fines on persons holding them.<sup>18</sup>

In his speech of March 22, Davis called to the support of the bill "all who consider slavery the cause of the rebellion," who think that "freedom and permanent peace are inseparable, and who are determined" to secure

both these ends "by adequate legislation." He believed that the bill prescribed "such conditions as will secure, not merely civil government to the people of the rebellious States, but will also secure to the people of the United States permanent peace after the suppression of the rebellion." He urged that the bill be accepted both by those who thought that "the rebellion has placed the citizens of the rebel States beyond the protection of the Constitution, and that Congress, therefore, has supreme power over them as conquered enemies," and by those who thought that "they have not ceased to be citizens and States, but that Congress is charged with a high political power by the Constitution to guarantee republican governments in the States, and that this is the proper time and the proper mode of exercising it." If slavery is dead, let us bury it out of our sight. He insisted firmly that the Constitution not merely conferred a power, but imposed a duty on Congress to guarantee a republican form of government. Congress possessed "a plenary, supreme, unlimited political jurisdiction, paramount over courts, subject only to the judgment of the people of the United States, embracing within its scope every legislative measure necessary and proper to make it effectual, subject to no revision but that of the people." It is a political



question which the Supreme Court will not review.

Secession is neither domestic violence, for the act was "the offspring" of the people's "free and enforced will;" nor invasion, for no foreign power attacked the South; but it is the act of the people of the Confederate States, "constituting either a legal revolution, which makes them independent," or a "usurpation against the authority of the United States." All parties in Congress took the latter view and agreed that no "rebel government" was a "State government within the meaning of the Constitution." The President and the courts of law concurred in this view. He cited *Luther vs. Borden*, the Rhode Island case, as authority for the position that "it is the exclusive prerogative of Congress—of Congress and not of the President—to determine what is not the established government of the State." Congress was now executing its duty "by its arms," and was "engaged in suppressing a military usurpation." Success would result in "the overthrow of all semblance of government in the rebel States. The Government of the United States is then, in fact, the *only* government existing in those States, and it is there charged to guarantee them republican governments," which duty carried with it the right to pass necessary laws to accomplish that re-

sult and to see that "everything inconsistent with the permanent continuance of republican government shall be weeded out." He saw no choice but that "the rebel States must be governed by Congress, till they submit and form a State government under the Constitution, or Congress must recognize State governments which do not recognize either Congress or the Constitution of the United States, or there must be an entire absence of *all* government in the rebel States, and that is anarchy." He rejected the two latter positions, for to recognize a government which does not recognize the Constitution is absurd," and to "accept the alternative of anarchy is to assert the failure of the Constitution and the end of republican government." He found no government in the rebel States, except the authority of Congress, which body must "administer civil government, until the people shall, under its guidance, submit to the Constitution of the United States, and under the laws which it shall impose and on the conditions Congress may require, reorganize a republican government for themselves and Congress shall recognize that government." The insurrection was not yet suppressed, and it was not yet time to reorganize the State governments, but in that "intermediate period" Congress ought to take possession of the "States now in rebellion,"

until a "republican government can be established deliberately, undisturbed by the sound or fear of arms and under the guidance of law."

No one State had been absolutely conquered and in no such State did "enough of the population" adhere "to the Union to be intrusted with the government of the State. One-tenth cannot control nine-tenths. Only in West Virginia, and possibly in Tennessee, were there enough Union men to be intrusted with power. \* \* \* You can get a handful of men in the several States who would be glad to take the offices, if protected by the troops of the United States, but you have nowhere a body of independent, loyal partisans of the United States ready to meet the rebels in arms, ready to die for the republic, who claim the Constitution as their birthright, count all other privileges light in comparison, and are resolved at every hazard to maintain it." Davis maintained that the "loyal masses of the South" in 1860 numbered a full half of the population. "They did not rebel, they voted against secession, they acquiesced in the vote which decreed it, they went with their State, they were content to accept what they did not prefer, but were unwilling to resist; they preferred Union with peace, but when Union and peace could not exist together, they yielded up

the Union, rather than make war to maintain it." Davis did not trust these men, and he further asserted that no man could say that any respectable portion of the Southerners were willing to accept any terms that even the Democrats would offer them. He would not entrust the State governments to "doubtful loyalty," until "armed rebellion shall have been trampled into the dust" and there "shall be in the South no hope of independence and no fear of subjection, until the United States is bearded by no military power and the laws can be executed by courts and sheriffs, without the ever-present menace of military authority." Until then each seceding State should be administered by a civil government appointed by the President.

He heartily approved a constitutional amendment prohibiting slavery, but felt that it was "not a remedy for the evils we must deal with," for it did not provide for the "civil administration of the States prior to the recognition of State government."

Next he discussed Lincoln's amnesty proclamation of December 8, which "provided no guarantee of law to watch over the organization" of the new governments, which pledged the Executive, but not Congress, and might lead to a government being recognized by the one and not by the other, which did not satis-

factorily "accomplish the final removal of slavery." The proclamation might not be valid; but, even if it were, it recognized slavery in parts of Virginia and Louisiana. The operation of the proclamation would become a judicial question "as soon as the State government is recognized," and Southern courts will maintain the institution of slavery, if possible. Davis did not "desire to argue the legality of the proclamation of freedom," but added: "I think it safer to make it law." This would be done by the bill, "by the paramount power of Congress to reorganize governments in those States, to impose such conditions as it thinks necessary to secure the permanence of republican government, to refuse to recognize any governments there which do not prohibit slavery forever, "for slavery is really, radically inconsistent with the permanence of republican governments." The Congressional jurisdiction had "attached in all the rebel States" and, "until Congress has assented, there is no State government in any rebel State." Davis believed that the time had "come, not merely to strike the arms from the hands of the rebels, but to strike the fetters from the arms of the slaves and remove that domineering and cohesive power without which we could have had no rebellion, which is now its animating spirit and which will die

when it dies." Webster might well be followed in his argument in the Rhode Island case that the "great political law of America is that every change of government shall be conducted under the supervising authority of some existing legislative body, throwing the protection of law around the polls, defining the rights of voters, protecting them in the exercise of the elective franchise, guarding against fraud, repelling violence and appointing arbiters to pronounce the result and declare the persons chosen by the people." This bill applied this "great principle of American political law."

For two months the bill was before the House—until, on April 20, Davis announced that he expected to call for the previous question. On May 4 he moved to perfect the bill, by excluding therefrom the rule of one-tenth of the citizens as sufficient to reorganize the State government and by requiring a majority so to act.<sup>19</sup> On the other hand, he proposed to soften the operation of the clause excluding the officers of the State and Confederacy by not having it cover inferior military officers, or those whose duties were merely ministerial, so that the exclusion operated only on persons of dangerous political influence. Davis's views, backed by his speeches of unusual power, caused such a change in the temper of the

House that, although the Republicans were at first almost unanimous in favor of accepting Lincoln's plan, when the bill came to be voted upon, Davis won by a vote of 73 to 59. Dr. Hosmer adds, "rarely in the history of the United States has eloquence produced so marked a result."<sup>20</sup> The bill remained in the Senate for a number of weeks. When it was returned to the House with amendments, Davis moved not to lay these amendments on the table, but to ask for a committee of conference, and carried the House with him by a vote of 63 to 42. The bill was passed on Independence Day, on which day Congress adjourned. Chandler went to Lincoln and urged him to sign the bill,<sup>21</sup> but in vain, for Lincoln took the ground that "Congress has no constitutional power over slavery in the States," and said that, "in asserting that the insurrectionary States are no longer in the Union," the bill made a "fatal admission that States, whenever they please, may, of their own motion, dissolve their connection with the Union. Now, we cannot survive that admission, I am convinced. If that be true, I am not President; these gentlemen are not Congress. I have laboriously endeavored to avoid that question ever since it first began to be mooted and thus to avoid confusion and disturbance in our own counsels." For that reason he had urged the

passage of a constitutional amendment abolishing slavery. He maintained that "I thought it much better, if it were possible, to restore the Union without the necessity of a violent quarrel among its friends as to whether certain States have been in or out of the Union during the war—a merely metaphysical question and one unnecessary to be forced into discussion."

A number of years later Blaine wrote that the Reconstruction bill was "commonly regarded as a rebuke to the course of the President, in proceeding with the grave and momentous task of reconstruction <sup>22</sup> without waiting the action or involving the counsel of Congress." Lincoln, however, was not in the humor for a rebuke. "Though the least pretentious of men, he had an abounding self-respect and a full appreciation of the dignity and power of his office. He had given careful study to the duties, the responsibilities and the limitations of the respective departments of government, and he was not willing that his judgment should be revised or his course censured, however indirectly, by a co-ordinate branch of the Government." <sup>23</sup>

The astute veteran statesman, John Sherman, wrote in his *Recollections*,<sup>24</sup> a generation later, that "I have always thought that Mr. Lincoln made a serious mistake in defeating a



measure which, if adopted, would have averted many, if not all, the difficulties that subsequently arose in the reconstruction of the rebel States."

Davis's position on the Committee on Foreign Affairs brought him into conflict with Seward on the Mexican question.<sup>25</sup> On December 19 he secured the passage by the House of a resolution concerning the activities of the French in Mexico. On January 7 he spoke in the debate upon the Diplomatic bill, saying that the civil troubles in the United States had developed a deep-seated hostility in several of the European governments, and one of them had "intruded with armed power into Mexico for the purpose of establishing upon our borders a monarchical government, menacing the institutions of the United States." Before the rebellion, France would not have thought it prudent to do this. In the judgment of the author of the "Warfare of Ormuzd and Ahri-man," the designs of the European governments extended "to the whole of what the Emperor of the French terms Latin America, and, if the United States mean that their influence shall meet European influence, wherever it may see fit to show itself in Latin America, then there we must have our representatives near all those governments. I think, very possibly, one gentleman might discharge

all the ordinary duties relating to commercial matters among several of those governments. The material thing is not the protection of our commerce, but the representation and protection of our political power, our political influence and the interests of republican government represented and which I take it we mean to maintain in Central America, as well as in Mexico, when the time shall come.<sup>26</sup>

On April 4, from the Committee on Foreign Affairs, Davis reported a joint resolution,<sup>27</sup> declaring that Congress "were unwilling, by silence, to leave the nations of the world under the impression that they are indifferent spectators of the deplorable events now transpiring in the Republic of Mexico; and that they, therefore, think fit to declare that it does not accord with the policy of the United States to acknowledge any monarchical government erected on the ruins of any republican government under the auspices of any European power." In a brief speech, supporting the resolution, Davis asserted that the Democratic policy towards Latin America was that "of the wolf to the lamb," frightening "foreign wolves from the prey they marked for their own," while the Republican policy was "to cultivate friendship with our republican brethren of Mexico and South America, to aid in consolidating republican

principles, to retain popular government in all this continent from the fangs of monarchical or aristocratic power, and to lead the sisterhood of American republics in the paths of peace, prosperity and power." He wished to state the American position, "before another usurper has placed his foot on Mexican soil."

Under Davis's leadership the House passed unanimously this resolution, to which Rhodes refers, as speaking "indubitably the opinion of the country," but as nevertheless "an injudicious utterance."<sup>28</sup> It has always been a disputed point as to whether Congress should take any part in foreign affairs, until they reach a crisis where the Legislature must constitutionally be called in, and the resolutions then adopted were in accordance with a line of precedents, which have frequently since been followed by Congress. In spite of Davis's urgency, Sumner left the resolution to slumber in his Senate committee room.<sup>29</sup>

The resolution as passed by the House was published in the newspapers, and Seward feared that the French government might view it as an unfriendly act of the United States. Accordingly, on April 7, he wrote to Mr. Dayton, our Minister at Paris, stating that the relations of the United States with Mexico and France constituted an executive and not a legislative question, and directing

Dayton, in Lincoln's name, to tell the Emperor that he contemplated no change in policy. Seward admitted that the resolution represented the unanimous sentiments of the people of the United States, but wrote that it was another question whether it was necessary, or proper, to express such a sentiment.

Seward should rather have told Dayton that the resolution was a joint one and that until passed by the Senate and signed by the President, it should not be taken as an announcement of the policy of the country. Before Seward's dispatch reached Dayton, Drouyn de l'Huys, the French foreign minister, read the resolve and said to our minister in reference thereto: "Do you bring us peace or war?", when he met the latter. After reading de l'Huys Seward's dispatch, Dayton wrote again, stating that the difficulty had been settled.<sup>30</sup> As a result of this, the French government announced in the *Moniteur* that it had received from the United States satisfactory explanations in reference to the resolution passed by the House. This announcement naturally aroused Davis, who on May 23 induced the House to ask Lincoln for the explanations he gave Napoleon. This was done, and on May 25 Davis had the correspondence referred to the Committee on Foreign Affairs. After two unsuccessful attempts to present the

report of the committee,<sup>31</sup> late in the session,<sup>32</sup> he brought in a resolution stating that Congress had a "constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, as well in the recognition of new powers as in other matters, and it is the constitutional duty of the President to respect that policy, not less in diplomatic negotiations than in the use of the national force, when authorized by law." The resolution declared that "the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it, and each proposition, while pending and undetermined, is not a fit topic of diplomatic explanation with any foreign power." This report was adopted by the House.<sup>33</sup>

Davis spoke on May 26 in favor of terminating the reciprocity treaty between the United States and Canada, because it was "the last remnant of the old, one-sided Democratic policy, always for the benefit of foreign nations." He also opposed the treaty, because it kept up a lucrative trade in coal against the interest of Maryland, and because the Canadians had availed themselves of it to modify their tariff, so as to make it injurious to us, without violating the treaty in terms. He opposed the negotiation of another treaty, since "We are a heavily taxed people and Cana-

dians a lightly taxed one, and, therefore, absolute reciprocity" gave them the benefit of the difference between the taxes and was one-sided. "We can not make," he continued, "arrangements with any country for free trade, so as to take away the legislative discretion of Congress and render it impossible to adjust our internal system as the public interest requires." The Ways and Means Committee had been interfered with in adjusting internal taxation, and will be interfered with in the adjustment of the tariff by the exemption of articles by this treaty. Davis would not pass hostile legislation, but wished that each nation should "make the law to suit its own convenience and interest," and then commerce will be let free, "so far as it is mutually beneficial." Such a treaty Davis believed, furthermore, to be a "direct invasion of the powers of Congress to regulate commerce with foreign nations and to lay and collect taxes, and transferred to the President and the Senate prerogatives which belong to Congress as a whole."

Desirous of having the war brought to a successful conclusion, on February 3, Davis moved to add to the Enrollment Act a provision that no one shall be allowed to pay commutation money except clergymen, Quakers, and men with dependent wife and children and less than \$1,200 income independent of

their industry. To prevent hardship, he would allow, in case of any drafted man on whom a near relative may depend for support, \$10 per month for each person, not exceeding \$500 annually in any case. The money should be paid directly to the dependent person, or guardian. "The enemy now presses our forces at every point within rifle shot," said Davis. "Any sudden breeze may bring them directly into collision with our depleted army. In any event, early in March, the armies will come into collision. It is, therefore, important, unless the United States mean to abandon the contest, or unless they mean to be beaten, directly, at the outset of the campaign, that they should restore their armies to an adequate strength to meet and overwhelm the enemy. A balanced campaign is a lost campaign; a balanced fight is for the United States a lost day, wasted honor, wasted time, wasted treasure." He opposed giving bounties, as he held that "the Republic has a right to have the services of every man competent to bear a musket. The way, the democratic way, the republican way, the wise and efficient way to raise an army is to make every man, within the military ages, liable to military duty". A week later, he moved to strike out the provision for the payment of \$300 to each owner of a drafted slave, on the ground that, "if slaves

are liable to military duty at all, they are liable to military duty on the same ground as every person (citizen or denizen), who owes obedience to the laws. If they owe military service, we owe the master nothing, for taking what the slaves owe. If they do not owe military service to the country, I do not mean, for one, to buy slaves for soldiers. In my judgment, they do owe military service to the Government. Can anybody contend for one moment, in the eye of reason and common sense, that four million men, strong, stalwart and energetic, and who have proved themselves on the field of battle to be as courageous as white men, more amenable to discipline and more inured to the vicissitudes of climate and to daily labor—can anybody suppose that that great body of men are not liable to be taken by the laws for the defense of our country? If they are, it is because they owe the duty to the Government and, if they do, we owe the master nothing for taking them.”<sup>36</sup>

He instanced the fact that a son or an apprentice might be taken, “who is quite as dear, quite as necessary, quite as valuable to the father and to the employer,” as the slave to the master, and he denied that a slave, necessarily, was made a “freeman by taking him for a soldier.”<sup>87</sup>

On the next day, Davis moved<sup>38</sup> that “a just



compensation" be paid "each loyal owner of any slave, who may volunteer into the service of the United States." He did this, not because it was "due at all to the owner of the slave," but to ratify the policy instituted by Lincoln in Maryland. By Davis's proposal, in the case of the slave, the bounty was to be paid to the master, on his freeing that slave; as it would have been paid to the white volunteer himself. He differentiated this case from that of a negro drafted into the army; for, "if the Government has the right to take the slave, it has the right to take him exactly as it takes the son, the father, or the brother of any citizen of the Republic, with no more compensation."

Near the close of the session,<sup>39</sup> Davis unsuccessfully<sup>40</sup> advocated an amendment to the Enrollment bill, providing that no exemption should be obtainable from military service on payment of commutation money. "We want *men*, not money. We want men to bear arms." No government should allow "one man to pay his obligations to the Republic in money," while it "requires another to pay it in blood." He further advocated the division of the men enrolled as fit for military service into two classes, one comprising those from 18 to 25 years of age, the other those from 25 to 40. Each year 25,000 men should

be drafted from the first class to supply deficiencies in the army, and any more men needed should be taken from the second class. The draft should not be undertaken, until volunteers, each of whom should be allowed \$300 bounty, had been called for, and every drafted man, having persons dependent on him and not having \$300 a year income, should be allowed \$20 per month for such dependents. He advocated a draft in the occupied parts of the rebellious States and was willing that volunteers secured in these States should be credited to the State procuring them. With these provisions, Davis believed the Government would have "power to create an army, which, if there be only wisdom and energy at the White House, will be able to stamp out the rebellion in another campaign."<sup>41</sup>

It was proposed to establish a Bureau of Freedmen's Affairs and, as the disposition to be made of free negroes was a subject which interested Davis greatly, he addressed the House thereupon on January 25.<sup>42</sup> James Brooks, of New York, had impeached the election of representatives from Maryland, saying that if the people of the State had been allowed to vote, they would have elected other men, and Davis, immediately, denied that the people were prevented from voting, except those "who disavow, deny and disown their allegiance to

the United States," who, accordingly, had no right to vote. The complaint of the interference of the military with the elections was made only as to four of the eight counties in the Eastern Shore district. The Democrats had carried the Southern Maryland district and, in the other three districts, there was no opposition to the members elected, though "a distinguished adviser of the President" urged opposition to Davis. The State was carried for the "emancipation candidate for Comptroller" by 20,000 majority, and the extreme claims of the opposition could not cut down that majority by one-third. The Legislature in Maryland was "overwhelmingly Union," but had been opposed to emancipation, until the election had "carried with it such moral power" that a majority of both Houses were "compelled to pass just such a bill as we dictated to them," for the summoning of a constitutional convention.

Slavery was not yet dead in Maryland. A majority of the Convention had to be secured "on the old slavery apportionment, where one-fourth of the population controlled the State," and it was uncertain how potent was the "hostile influence that presides near the President's ear." As yet the cause of emancipation in Maryland was under "no obligations" to Lincoln for its advance and, on the 22nd, a

convention of emancipationists, while expressing confidence in him and "appreciation of his services, added this significant admonition" that they opposed the "reorganization of State Governments" in seceded States, which did not "recognize the immediate and final abolition of slavery as a condition precedent," and that they regretted that "influences in the cabinet" had "depressed the efforts of the radical friends of the administration and of emancipation and given prominence to those who are the unwilling advocates of emancipation" in Maryland, Missouri, Arkansas, Tennessee and Louisiana. Davis justified this resolution, as showing that the Maryland advocates of freedom gave a devotion "not personal, but to principle," and would support Lincoln, only so long as he supported the cause of emancipation.

In the rebel States also, slavery was not dead; but, if the Democrats should carry the coming election, "slavery is as alive as it was the day that the first gun blazed against Sumter." Davis set his face to the future and feared not "to say, to *friend* and foe, what the times demand." Slavery was not destroyed by Lincoln's proclamation, which only was "valid to the extent of turning" slaves "loose from their masters during the rebellion. If the old governments should be re-established and

the "dominant aristocracy" allowed "to repossess the State power in its original plenitude," the institution would be restored. "Nothing but the resolute declaration of the United States, that it shall be a condition precedent that slavery shall be prohibited in their Constitutions and that the United States shall give judicial guarantee to the negroes, freedom in fact, and that the United States shall be kept under the control of men of such political views and purposes that the law will be executed as a constitutional law and imposed on reluctant people—nothing else can accomplish the death of slavery."

Davis supported the bill as a temporary measure, but he felt that the nation's permanent policy should be determined toward the freeman. Lincoln had favored colonization and compensation, and Montgomery Blair, "supposed on that and other subjects, more accurately to represent his opinion than any other person," had commented on the President's policy, in the form of an attack upon the "radical abolitionists." Davis acknowledged himself to be one of these and denied that they wished "to elevate to an equality" with the whites the negroes, or that it was true that "unequal races cannot live together on terms of equality and peace." He appealed to history for the disproof of "that as-

tounding generalization" and adduced the *Volkerwanderung* as an instance. The Spaniards would have kept the Moors as fellow citizens, had the latter been willing to accept Christianity. The San Dominican negroes engaged in no slave revolt; but, having been freed by the French Assembly, refused to submit to re-enslavement. In Jamaica and in the French colonies, the freedmen live peacefully with the whites. In Mexico and South America, the "two races are not blended, neither is reduced to slavery;" but "the Indian and Spaniard live together, because both are civilized and both are Christian and both are interested in the same laws and government and industry." In our own country, the Massachusetts colonists warred on the Indians, because the latter were a "people of different religion," who "refused every form of American civilization." The race riots in New York City in 1863, a solitary instance of such violence, were due to the Irish, not to Americans, and even these riots had "more of Democratic hostility to the Government than Celtic hostility to the negro." If the negro be transplanted, whither shall he go? No place can be found for him. Furthermore, if compensation be given loyal owners for loss of slaves, "who will submit to additional millions of taxation?" Davis urged that "such a debt would equal the war debt;

it would prostrate the resources of the country for generations; it would inflict the scourge of perpetual debt on a land destroyed by civil war and made a desert by the deportation of its laboring population." Nay more, "the master will offer the negro more to stay, than the Government will offer him to go. Two generations can not fill up his place, and, if we can stand his presence two generations, perhaps Christian philosophy will enable our descendants to reconcile themselves to the permanence of what has been found tolerable so long." The negroes themselves do not wish to leave America, but "prefer to stay where they are."

Davis appealed to Congress to "deal with the problem, under the conditions which exist." "The folly of our ancestors and the wisdom of the Almighty, in its inscrutable purposes, having allowed" the negroes to "come here and planted them here, they have a right to remain here, and they will remain here to the last syllable of recorded time. And whether they become our equals or our superiors, whether they blend, or remain a distinct people, your posterity will know, for their eyes will behold them, as ours do now. These are things which we cannot control. Laws do not make, laws can not unmake them. If God has made them our equals, then they

will work out the problem which he has sent them to work out and, if God has stamped upon them an uneradicable inferiority, you cannot make one hair white or black, or add one cubit to their stature." He insisted that Congress do "not add to the inherent difficulties of the problem, prejudices, drawn from fancies, not facts." Next he defined his own position as "a Marylander, not a 'Northern fanatic.' My father was a slaveholder. I, myself, for years was a slaveholder. I have lived nearly all my life in Maryland. I know the temper of her people. I have lived for years in Virginia. I know the temper of her people; I know the relations of the white and black population in those States." Maryland had more free negroes than any other State and Virginia came next. In Maryland, "one-eighth of our population is free negro." In 1859, a Slaveholders' Convention was held in Maryland, whose conveners intended to put an "end to free negroism in Maryland;" but to that convention came James Alfred Pearce, an old Whig, whom Davis honored and to whom he referred as "always a statesman, always a gentleman, however, wandering into errors in his last days." He made a report, in which he said that the result of any removal of the free negroes would be "far greater than all the evils the people of Maryland ever suf-



ferred from them. In the City of Baltimore, it is estimated that there are more than 25,000 of them, employed chiefly as domestic servants or laborers in various departments of industry. In many of the rural districts of the State, where labor is by no means abundant, they furnish a large supply of agricultural labor, and it is unquestionable that quite a large portion of our soil could not be tilled without their aid. In some districts, they supplement all the labor demanded by the farmers. Their removal from the State would deduct nearly 50 per cent. from the household and agricultural labor furnished by people of this color, and indispensable to the people of the State, would produce great discomfort and inconvenience to the great body of householders; would break up the business and destroy the property of large numbers of landowners and landrenters; would be harsh and oppressive to those people themselves; would violate public sentiment, which is generally not only just but kindly, and would, probably, lead to other evils. We are satisfied that such a measure could not receive the legislative sanction and would not be tolerated by the great body of the people of Maryland, even with that sanction. The committee, therefore, cannot recommend their expulsion from the State. Still more unwilling should they be to favor any measure

which looked to their being deprived of the right to freedom, which they have acquired by the indulgence of our laws and the tenderness of their masters, whether wise or unwise, or which they have inherited as a birthright." After that convention, an attempt was made to have the Legislature pass a bill, authorizing the hiring out of negroes to the highest bidder and, if they should then prove disobedient, to have them sold as slaves. As passed, it extended to only a few counties,<sup>43</sup> and was not to become operative there until approved by popular vote. It was adopted in only one county, and there by accident.<sup>44</sup> Davis contended that the judgment of the people of Maryland concerning the free negro was that "we neither will expel ourselves, nor encourage to go, nor allow other people to expel" them.

The emancipation movement in Maryland was indebted to negro enlistments. At first only free negroes were enlisted, but after Judge Bond's remonstrance a levy was made "from the slave population, in order that the Union men might have the free colored population to hire," and "every slave enlisted was a poor white man's substitute." The recognition of that fact, more than anything else, brought over "the people of the slaveholding counties of Maryland, who had voted at the

beck of the slaveholders for generations," so that Creswell was elected over Crisfield, "a most able gentleman." Davis deprecated arguments appealing to prejudice or to hostility, and urged that "the great politico-economic argument should be permitted to prevail."

Stern in his loyalty, Davis rose to heights which remind one of Cicero's orations against Catiline, in a speech delivered in the House on April 11, when a resolution was being considered for the expulsion of Mr. Alexander Long, of Ohio.<sup>45</sup> He struck to the heart of the matter, and maintained that the question at issue was whether, as a legislator sworn to maintain the Constitution, Mr. Long had shown a "determination not to defend, but to yield up undefended to the enemies of the United States what he was sent here to protect." The precedents of the House showed that "words may prove criminality" and may be "visited first by censure, and, if they judge it necessary to the public safety, by expulsion from the House." He criticised the House for recently voting that Benjamin G. Harris, from the Fifth Maryland district, was an "unworthy member" for language uttered in the House which designedly tended to "give aid and encouragement to the public enemies of the nation," and then not going further to his expulsion. Yet the censure voted on that oc-

casion showed the House's punishment of the utterance of words. Long had said that the only alternatives were: the "extermination of the enemies of the United States," or the "recognition of the Southern States as an independent government." In this view he agreed with the "rebel chiefs, and, like them, he avowed himself for recognition" of the Southern Confederacy, which meant "the dissolution of the United States."

Having thus stated the case in "plain language," Davis charged Long as having violated "a solemn oath and, therefore, not to be a fit depository of his constituents' vote, a safe person to be intrusted here with the secrets of the United States, a worthy guardian of the existence of the republic." In 1860 "the avowed enemies of the Republic" left the House. "One by one, as their stars dropped from the firmament of the Union, they went out, some with tears in their eyes over the miseries they were about to inflict; some of them with exultation over the coming calamity; some of them with contemptuous lectures to the members in the House; some stayed behind to do the traitor's business, in the disguise of honest legislators in both Houses, as long as they dared." Davis heaped scorn upon those too cowardly to avow the friendship they really felt for the secessionist cause and

preferred an "open adversary." He did not wish to restrict free speech, but claimed that Long was arraigned, "because he violates the law of the country by his purpose to destroy it." No privilege of the right to debate should prevent the punishment of such a violation. Next he called attention to the moderation of the House, and asked what would have been the fate of a man who in the Confederate Congress, the French National Assembly, or the English Parliament in 1745, should have made a like proposal to yield. If it were a constitutional right to speak thus, in spite of the law, the safety of the people would require Long's expulsion; but it is "within the limits of the written law, which the wisdom of our forefathers gave us, so to act." The question is one "that nobody in this country has a right to be on more than one side of. On one side is patience, duty and an oath. On the other is treason, crime and perjury." Chatham's example must not be cited against Davis, for he entered his "dying protest against the recognition of American independence." Opinion is "like the ocean, whose tides rise and fall, day by day, at the fickle bidding of the moon, yet it is the great scientific level from which every height is measured—the horizon to which astronomers refer the motion of the stars. But, like the ocean, it has depths, whose eternal

stillness is the condition of its stability. Those depths of opinion are not free, and it is they that are touched by the words which have so moved the House." Such words "break up the fountains of the great deep, on which all government is borne," and "pour its flood in revolutionary ruin over the land." To punish them is not "a violation of freedom of opinion, but is a protection of its normal ebb and flow." If other men have voiced similar expressions, that fact will not excuse Long, for "their guilt is not his innocence," and "if their guilt is beyond my judgment," Long's guilt is not.

He then attacked the Democratic party for having "more sympathy with the enemies of the country than with the country itself." Even the aid of the war Democrats was "more embarrassing than their opposition." If that party should gain control of the nation, then Davis said, in a long and eloquent sentence, it might be necessary to consider recognition of the Confederacy.

"When the people, exhausted by taxation, weary of sacrifices, drained of blood, betrayed by their rulers, deluded by demagogues into believing that peace is the way to union and submission to victory, shall throw down their arms before the advancing foe," then Congress "may, without treason to the dead republic, declare themselves for recognizing

their masters at the South, rather than exterminating them. Until that day, in the name of the American nation, in the name of every house in the land where there is one dead for the holy cause; in the name of those who stand before us in the ranks of battle; in the name of the liberty our ancestors have confided to us, I devote to eternal execration the name of him who shall propose to destroy this blessed land rather than its enemies." The people had risen to the "height of the occasion, dedicated this generation to the sword," and as a result the "banner of the Republic, still pointing onward, floats proudly in the face of the enemy," while "vast regions are reduced to obedience to the laws" and a "great host, in armed array, now presses with steady step into the dark regions of the rebellion." Davis believed that the "earnest and abiding resolution of the people" will "save us." But if, "with such heroic resolve, we fall, we fall with honor and transmit the name of liberty, transmitted to our keeping, untarnished." This eloquent peroration was greeted with deserved applause, for its last sentences still stir one's blood. "If we must fall, let our last hours be stained with no weakness; if we must fall, let us stand amid the crash of the falling republic and be buried in its ruins, so that history may take note that men lived in the middle of the nineteenth cen-

ture worthy of a better fate, but chastised by God for the sins of their forefathers. Let the ruins of the Republic remain to testify to the latest generations our greatness and our heroism. And let Liberty, crownless and childless, sit upon these ruins, crying aloud with a sad wail to the nations of the world: 'I nursed and brought up children and they have rebelled against me.' "

Gideon Welles, Secretary of the Navy, had disliked Davis for some time and believed that Davis was disappointed because he had not received Welles's portfolio.<sup>46</sup> Because of this dislike, Welles asked the Speaker, when the latter consulted him, not to place Davis on the Naval Committee. Welles admitted that Davis was "one of the most talented and ingenious men in Congress," but he especially suspected Davis, because he had been the "friend and adviser" for some time of Admiral Dupont, between whom and Welles difficulties had arisen.<sup>47</sup> Dupont had asked to be transferred to Washington, and Davis suggested this transfer to Seward, who approved it, but Welles and Lincoln declined to make the transfer.<sup>48</sup> On February 25, when the Navy Appropriation bill was under discussion in the House, Davis made an attack upon the management of the department and asked an investigation of it, while he eulogized Du-



pont.<sup>49</sup> Davis referred to the naval attack upon Charleston "as brilliant and as insane as Balaclava," and continued that "it was not a naval expedition, undertaken on the judgment of naval officers or advised by the officer in command charged with its execution, but was devised in the department, without consulting him. If there is shame, it is because the department thought a cotton-spinner was better than an admiral to plan it." The ablest officer in the Navy thought that the attack must be a combined one in order to be successful. Admiral Dupont was brave.<sup>50</sup> The Navy Department met him with slurs and insults. Sumter is now a heap of ruins, but Charleston does not fall. The "men in control of the Navy Department keep in retirement the most brilliant officer since Decatur, because the department's crude experiment failed and it was advisable that the department should not appear at fault."<sup>51</sup>

Interested in judicial matters,<sup>52</sup> Davis was willing to exclude cases of tort from the jurisdiction of the Court of Claims, but was unwilling that a mere administrative officer, by administrative action, should conclude claims<sup>53</sup> against the Government, and held that that court's jurisdiction extended to all cases of contract. When the National Currency bill was being discussed, Davis<sup>54</sup> objected to driv-

ing the Bank of Commerce out of business, because of a provision in its articles of association as to personal liability of stockholders.<sup>55</sup> State banks, he maintained, must, on the other hand, be driven from existence, or there would be a "plethora of currency" and a consequent "desolating revulsion" like that of 1837.<sup>56</sup> He opposed taxation of national banks by the States, "as placing the existence of these corporations at their mercy." It was a "question between the sovereign power of the United States and the necessities of the machinery it creates," on the one side, and the necessities of the States that desire to tax them," on the other.<sup>57</sup>

From the Committee on Rules<sup>58</sup> he reported an order, which was passed, that the names of members present, but not voting on any proposal, shall be recorded on the Journal immediately after the yeas and nays.<sup>59</sup>

Davis felt that he was "charged simply with the interests of the United States, and, in subordination to the interests of the United States, the interests of my district."<sup>60</sup> Following the "paramount interest of the country," he voted to censure and to expel his fellow-representative from Maryland, B. G. Harris, for disloyalty.<sup>61</sup>

When a Missouri election case was before the House,<sup>62</sup> Dawes intimated that the decision

of the case might have an effect upon the prospects of the Administration in the coming election. Davis then asked him whether that was a proper consideration. Dawes, without answering, charged Davis with "midnight cabals" and responsibility for disorder at the Baltimore elections, and for dens, where voters were cooped up and "from which Plug Uglys go forth." Davis waited for three days and then replied in a spirited address.<sup>63</sup> In this *apologia pro vita sua*, he began by stating that an election case is not a personal contest between the sitting member and the claimant, but is a question relating to the rights of the people represented. "Is either of the parties claiming the seat entitled to speak here for the people of the district? That question can only be presented in two aspects. First, was there a valid election at all and anywhere in the district, and, secondly, if there was a valid election, which of the two parties had a majority." To declare an election void at one poll "is not an avoidance of the election, unless the election was centered at one poll, where an overbearing force was present, with menace and violence such as would deter a man of ordinary firmness from approaching the polls and tendering his vote." Davis maintained that the "prevalence of rumors, or threats, or intimidations before the day of elec-

tion, or elsewhere than at the polls, or in gaining access to them, is no consideration at all relevant to the validity of the election." In the Missouri case fifteen counties were included in the district, and there was no pretence of violence, except as to five of these, while there was no violence that could intimidate in one-tenth of the precincts in those counties. "Fear of use of force by legal means" is no reason for annulling an election; consequently, there should be no complaint of the presence of militia at the polls. They are there for protection. If a person is arrested by them, he may complain to the proper authorities.

He turned next to the attack made on him by Dawes. Massachusetts and Maryland must have the same law. It was a "most unkind and unexpected occurrence that a gentleman from Massachusetts should rise, after the great struggle for freedom in the loyal slave States of the Union, when triumph has perched on their banners, and reproach them with the dust and sweat of the conflict, rather than swell the chorus of exultation."<sup>64</sup> Dawes opposed the use of military elections; but when the troops were used in the "massacre" at the Washington City election of 1857, the Republicans were silent, for they did not care "to soil themselves by defending Know Nothings." Yet "all who are against the common

enemy are for the Republic.” The Democrats, when they oppose the use of troops at the polls, should remember the transactions in Kansas. Although Maryland elections had often been attacked, Davis had “sat with contemptuous silence in this House for six years, scorning to notice railing accusations” made elsewhere. “No man ever dared, in my presence,” he continued, “to impeach my conduct.” Only after his third election did the opposition contest his seat. He had easily won that contest, and Dawes had then voted that Davis retain his seat. “No elections have anywhere occurred of more national importance or which reflected more honor upon the indomitable spirit and determination of the people to vindicate their rights at every hazard, than the elections in which I was a candidate.” As he had been attacked on the floor of the House, on that floor he now defended his conduct to the people of the United States. The American party was “organized to rescue the public school from Democratic and sectarian conspiracy, and first met and broke the power of the Democratic domination” of the country. The Republican party “encountered its fragments, when its sceptre was already wrested from its hands.” Davis had risen to “vindicate” the memory of the American party and “claim its true place in history.” He

rehearsed the Maryland campaigns from 1855 to 1859, in which latter year John Brown's raid caused such alarm that the Democrats carried the State. The persons whom Dawes sneered at as Plug Uglys were as "respectable as the most respectable of his constituents. It is the heart of the American mechanics that he thus slights. Many of them now sleep in soldiers' graves. They constituted in great part the famous First Maryland Regiment, which, under the heroic Kenly, arrested with their bayonets for hours ten times their number of rebel cavalry at Front Royal and never yielded till they were literally ridden down and destroyed, that they might give the Massachusetts Banks time to save his army. They formed the great, silent, irresistible power which palsied the traitors who, on and after the 19th of April, vainly strove to tear Maryland from the Union." He closed by vindicating the Administration and saying, "while we have the power, we will enforce the Constitution as we think right." <sup>65</sup>

Without consulting his Cabinet,<sup>66</sup> Lincoln issued a proclamation on July 9 upon the subject of the Davis-Wade bill. He thought that measure "too rigid and too restrictive," <sup>67</sup> and that it were better to have "no fixed and formal method" of reconstruction and to be tied to "no single plan of restoration." He was

not willing to declare that the governments of Louisiana and Arkansas should be "set aside and held for naught," and he hoped for a constitutional amendment that would abolish slavery. Yet he was satisfied that the system contained in the bill was "one very proper, for the loyal people of any State choosing to adopt it," and he was willing to appoint military Governors, "with directions to proceed according to the bill," in States where military resistance was suppressed and the people had sufficiently returned to obedience to the Constitution and the laws.

The struggle between Congress and the President as to the right to reconstruct the Southern States thus began, and continued with increasing acrimony until finally a victory in fact was won by Congress under the Presidency of Andrew Johnson. Long years afterwards the Supreme Court of the United States supported Davis's position as the legal one, saying that it is a "legislative duty to determine the political questions involved in deciding whether a State government in form exists." <sup>67a</sup>

Chase was very angry at the issuance of Lincoln's proclamation, and years later E. L. Pierce, writing Sumner's biography<sup>68</sup> said that "no part of the President's entire official course was so open to exception as that which

he pursued on this subject of reconstruction, where he seemed to assert power for himself, to the exclusion of the people of the United States and of Congress." Lincoln's biographers are correct, however, in writing<sup>69</sup> that the "great mass of voters accepted Lincoln's proclamation as the wisest and most practicable method."

After Lincoln's proclamation had been issued, Davis sat down to prepare a public reply. Congress would not meet for several months, and he felt that an earlier answer should be made. When he had finished it, he read it to his friend and admirer, John T. Graham, who was to copy it out fair for publication. Graham was so thrilled with it that he said: "Mr. Davis, don't show what you have written to anyone else, but send it just as you have written it," fearing that if other Republican leaders in Maryland, such as Archibald Stirling, Esq., or Judge Hugh Lennox Bond, saw the document, they would soften and modify its expressions. Davis yielded to Mr. Graham's persuasion, and the document was sent to Senator Benjamin F. Wade just as Davis had written<sup>70</sup> it. Davis's act has been viewed as an "intemperate arraignment," which really strengthened Lincoln's position,<sup>71</sup> although it was not surprising that "men of so much intelligence, courage and tenacity" as Davis and



Wade would not permit so bold an act as Lincoln's proclamation to be issued, while they were silent.

Davis's best friends may well wish that he had left the manifesto unwritten. With the most exalted purpose, and with a fundamentally correct constitutional position, he prepared a document, whose fierce attack on the President could do no good, and which (save for the fact that it was boldly published) reminds one in many particulars of Hamilton's equally unwise attack on Adams in the campaign of 1800. The argument of the manifesto, addressed to "the supporters of the Government" is that of Davis's congressional speeches upon the bill for the reorganization of the seceded States and is cogent. The ostensible reason for the document was that Davis and Wade, having read "without surprise, but not without indignation, the proclamation of the President," felt that they ought not to pass it in silence, but ought to endeavor "to check the encroachments of the executive on the authority of Congress and to require it to confine itself to its proper sphere." With words of extreme condemnation, they declare that, so far as Lincoln's proclamation "contains an apology for not signing the bill, it is a political manifesto against the friends of the Government. So far as it proposes to execute

the bill, which is not a law, it is a grave executive usurpation." Lincoln had called attention in the proclamation to the fact that the bill was presented to him, just before the adjournment of Congress, and Davis properly exposed this subterfuge by showing that the bill had been so fully discussed for so long a time that "ignorance of its contents is out of the question." The provisions of the bill did not "take the President by surprise." The evidence rather tended to show that Lincoln had determined not to sign the bill, long before it passed the Senate. Davis also emphasized the danger of permitting the President's "wisdom and prudence" to be "our sufficient guarantees," in so important a matter as the treatment of the rebel States. Lincoln had upheld, in his proclamation, "those shadows of governments in Arkansas and Louisiana which Congress formally declared should not be recognized, by repelling the representatives and Senators from these States and by refusing them an electoral vote." Davis condemned these "mere oligarchies, imposed upon the people by military orders under the forms of election," and maintained that Lincoln, "by preventing this bill from becoming a law, holds the electoral votes of the rebel States at the dictation of his personal ambition." Not only so, but the Supreme Court, in the Rhode

Island case, had established the correctness of the doctrine that the "judgment of Congress, which the President defied, was the exercise of an authority exclusively invested in Congress by the Constitution." Under the Constitution, the right to Senators and Representatives is "inseparable from a State government. If there be a State government, the right is absolute. The two Houses of Congress are expressly declared to be the sole judges of their own members. When, therefore, Senators and Representatives are admitted, the State government, under whose authority they were chosen, is conclusively established; when they are rejected, its existence is as conclusively rejected and denied. And to this judgment, the President is bound to submit."

Lincoln had said that he was unwilling to "declare a constitutional competency in Congress to abolish slavery in States," but the bill only referred to rebel States, where Lincoln had already emancipated "much the larger number of slaves." Davis insisted that the President can not have "more discretion in this matter than Congress had. Indeed, except as to a small part of Louisiana and Virginia, the bill "added a congressional title and judicial remedies by law to the disputed title under the proclamation and perfected the work" of Lincoln. Slavery in the States can be abol-

ished only by their constitutions and the bill provided that the new State constitutions must contain a provision for manumission.

Davis's wrath knew no bounds at Lincoln's proposal to execute the bill as a law, by his "plenary dictatorial power," than which statement, he cried out, "a more studied outrage on the legislative authority of the people has never been perpetrated." He particularly objected to the appointment of provisional military governors, instead of civil ones, as the bill provided, and to the procedure, by "persons responsible to no law and more intrusted to secure the interests and execute the will of the President than of the people." He objected to the rebel States being allowed to take the easy way of following the requirements of the President's proclamation of December 8, which failed to give the needed "guarantees of future peace" or to "protect the loyal men of the nation against three great dangers: 1. The return to power of the guilty leaders of the rebellion. 2. The continuance of slavery, and 3, the burden of the rebel debt." The failure to sign the bill was a "rash and fatal act," a "blow at the friends" of Lincoln's "administration, at the rights of humanity, and at the principles of Republican Government." He had presumed on men's forbearance. Davis and Wade supported a cause, not a man, and

insisted that the "authority of Congress is paramount," and to that authority Lincoln must "leave political reorganization." The manifesto ends with the ringing call to the "supporters of the Government" to "consider the remedy for these usurpations, and, having found, fearlessly execute it." The manifesto caused Davis to be defeated by Gen. Charles E. Phelps in October for the Congressional nomination, but was characteristic of a man, who "always boldly avowed his opinions and assumed their full responsibility."<sup>72</sup>

When the manifesto appeared on August 8, Welles asked Lincoln what he thought of it, and was told that he had not read it and probably should not read it. "From what was said of it, he had no desire to" do so, and "could himself take no part in such a controversy as they seemed to wish to provoke." Welles added, "perhaps he is right, provided he has some judicious friend to state to him what there is really substantial in the protest entitled to consideration, without the vituperative asperity." Lincoln was content to let his opponents "wriggle,"<sup>73</sup> but thought it strange that Greeley would publish the manifesto in the *Tribune*, a paper which had favored the administration. The publication of the manifesto caused Welles to indite a more atrabili-ous passage than usual in his diary: "The pro-

test is violent and abusive of the President, who is denounced with malignity, for what I deem the wise and prudent omission to sign a law. There are many offensive features in the law, which is in itself an usurpation and abuse of authority. How, or in what way or ways, the several States are to put themselves right, and retrieve their position is in the future and cannot well be specified. There must be latitude and not a stiff and a too stringent policy pursued in this respect by either the Executive or Congress." Looking for low motives, Welles found that "in getting up this law it was as much an object of Mr. Winter Davis and some others to pull down the administration as to reconstruct the Union. I think they had the former more directly in view than the latter. Davis's conduct is not surprising," but Wade should not have lent himself to "such a despicable assault." Davis seemed to Welles to be the ringleader who had drawn in Colfax and they had flattered Wade to do a foolish act. Venting the vials of his wrath on Davis, Welles wrote of him as a man who "had a good deal of talent, but is rash and uncertain. There is scarcely a more ambitious man and one that can not be more safely trusted. He is impulsive and mad and has been acute and contriving in this whole measure." He is "not controlled by earnest zeal," but is "ambitious and malignant."

Nicolay and Hay<sup>75</sup> are hardly less severe. From the "grim beginning" of the manifesto until the end, it was the "most vigorous attack that was ever directed against the President by one of his own party during his term." It "insinuated that only the lowest personal motives could have dictated" Lincoln's action, while it also "ridiculed Lincoln's earnestly expressed hope for constitutional amendment." Every sentence of Lincoln's proclamation "came in for its share of censure or ridicule."

A less partisan critic<sup>76</sup> wrote that, notwithstanding the necessity for harmony among those desiring to put down the rebellion, after the issuance of Lincoln's proclamation, "two of the boldest leaders, disregarding every consideration of prudence, arraigned the President, in language which, for severity, was never surpassed by the invectives of his ablest political opponents. In the entire experience of the Republic, no executive had ever assumed to reject those provisions in a legislative measure which he disliked and adopt those that were acceptable. This is precisely what Mr. Lincoln did and the reasons for his action he declared to the people with a confidence" like Jackson's.<sup>77</sup> Davis's ardent admirer, Blaine, writing twenty years later, said that, while the Congress almost unanimously dissented from Lincoln's "extraordinary" course

in issuing his proclamation, they had gone home and found the people united in his support. "Two of the ablest, most fearless, most resolute men then in public life" were exceptions and they sent forth the manifesto, "able, caustic and unqualified." "The protest closed with the language of stern admonition, if not indeed of absolute menace," but it was "*a brutum fulmen* with no visible political result," save the defeat of Davis, when a candidate for renomination to Congress. "The very strength" of the paper was its "special weakness. It was so powerful an arraignment of the President that, of necessity, it rallied his friends to his support with that intense form of energy which springs from the instinct of self-preservation." Blaine is probably correct in adding that, even if the President were in error, it were better to follow him than to have dissension and division, and that men preferred to follow Lincoln, who had all the power, rather than Davis and Wade, who had none.<sup>79</sup> In spite of the "solicitations of most of his personal friends in Maryland," Lincoln refused to "discriminate against the faction headed by Mr. Davis in making appointments to office in that State" and when, during this important campaign, a deputation of prominent supporters of the administration in Maryland came to Washington to denounce Mr.



Davis for his outspoken hostility to the President, saying such a course, if it continued, would lose Mr. Lincoln the electoral vote of the State, he replied: "I understand that Mr. Davis is doing all in his power to secure the success of the emancipation ticket in Maryland. If he does this, I care nothing about the electoral vote."<sup>80</sup>

Lincoln's words might have been even stronger. When Creswell pronounced his eulogy on Davis, he said "his crowning glory was the leadership of the emancipation movement" in Maryland.<sup>81</sup> The Confederates had talked of delivering the State from the "tyrant's heel" which was upon its neck, but Davis set about the task of breaking the last tie which bound Maryland to the other slave States by destroying slavery and thus placed the State "unalterably on the side of the Union and freedom." Gathering Creswell, Cushing and a few others, he organized his "little band, almost ridiculous from its want of numbers, early in 1863." Enemies laughed them to scorn, but Davis led them to success through a contest, in whose "heat and fury," the hearts of his associates were "welded into permanent friendship" with him. He announced their platform in a few comprehensive words, declaring that they stood for "a hearty support of the entire policy of the national adminis-

tration, including immediate emancipation by constitutional means." He opened the campaign, by publishing an address of some twenty pages to the people of the State, which pamphlet Creswell characterized as notable "for the warmth and vigor of its diction and the lucidity and conclusiveness of its argumentation." He closed his message with this hopeful sentence: "We do not doubt the result and expect, freed from the trammels which now bind her, to see Maryland, at no distant day, rapidly advancing in a course of unexampled prosperity with her sister *free* States of the *undivided* and *indivisible* republic."

In the campaign, Creswell continued: "Mr. Davis was ubiquitous. He arranged the order of battle, dictated the correspondence, wrote the important articles for the newspapers, and addressed all the concerted meetings. In short, neither his voice nor his pen rested in all the time of our travail. He would have no compromise, but rejected all overtures of the enemy short of unconditional surrender. On the Eastern Shore, he spoke with irresistible power at Elkton, Easton, Salisbury and Snow Hill, at each of the three last named towns with a crowd of wondering "American citizens of African descent" listening to him from afar, and looking upon him as if they believed him to be the seraph Abdiel. His

last appointment, in extreme Southern Maryland, he filled on Friday, after which, bidding me a cordial God-speed, he descended from the stand, sprang into an open wagon awaiting him, travelled 80 miles through a raw night air, reached Cambridge by daylight and then crossed the Chesapeake 60 miles, in time to close the campaign with one of his ringing speeches in Monument Square, Baltimore, on Saturday night."

Victorious in the election of 1863, he then "allowed himself no reprieve from labor," until the Legislature had called a constitutional convention, and had voted to adopt the Constitution abolishing slavery, which that convention, had framed. Then he went before the Court of Appeals successfully to maintain the validity of the adoption of the Constitution and "drew extraordinary encomiums, even from his opponents in that angry litigation."<sup>82</sup>

It is, therefore, easily to be seen that during 1864, Davis took a very prominent part in events in Maryland. In pursuance of a call by the Unconditional Union State Central Committee, he addressed a meeting in the Maryland Institute in Baltimore on April 1.<sup>83</sup> He began, by asserting that the election of the previous autumn had shown that the people of the State wished that Maryland "be put upon the same basis of free institutions, which have

wrought such miracles of prosperity among our Northern sisters." The Governor and the Legislature had been unfriendly, but the Assembly "did not dare adjourn without passing" the bill to submit to the people the question of calling a Constitutional convention. Two sets of delegates were nominated for election to that Convention, and Davis strongly urged the election of those men who were pledged to vote for emancipation. "The slavery interest" was struggling "vigorously to maintain its domination." It had been hitherto master of the whole State, through the "rotten borough counties of Southern Maryland and the Eastern Shore," who "have used their power to take to themselves the lion's share of our political honor and to cast upon you the ass's share of every political burden." Taxation had been unevenly imposed. One-fourth of the white population had held one-half of the political power. The first fruit of the "breaking down" of slavery should be to redistribute political power and to "reassert the right of numbers" in Maryland. The slavery men were trying to discourage men from voting for a convention, on the ground that it might vote to compensate slaveholders for freedom. Davis ridiculed this fear. The slaveholding counties elected only half the convention. Any "ordinance they may pass

as part of the Constitution has to be submitted to the vote of the people for their sanction and the vote of the City of Baltimore alone will defeat any bill for compensation." Creswell's victory, in "the Africa of the Eastern Shore," proved that some, even of the slave-holding counties, would vote for emancipation. Davis's experience in the Eastern Shore campaign, had taught him that the poorer classes, who, "for three generations, had been voting at the dictation of the leading gentlemen of their regions," had now "cast their first independent vote, for their own freedom first and the freedom of the negro afterward." Crisfield, "the ablest man of the Eastern Shore, a gentleman of large property, a large negro-holder, with a national reputation, leaning to the Copperhead style of politics, intensely conservative," was beaten by Creswell, who argued that the time for emancipation was come. Not only so, but the Maryland Legislature had excluded secessionists from voting at the next election, holding "that men who are traitors to the country have no part in our political community." The opponents alleged that the advocates of the Convention favored giving to the negro "equality" and, for that allegation, Davis unmercifully ridiculed them and denied the charge. The slave-holders deserved no com-

pensation, because they had failed to pay fair taxes on slave property. For forty years, they had been "plunderers of the public purse for their private benefit." They had also spurned the "only chance they ever had of receiving anything as a ransom for their slaves," by rejecting all overtures from the Federal Government in the early months of the war. "Between them and compensation, the great gulf is fixed." The President's proposal of compensation was "intended to promote the suppression of the rebellion," to "save a thousand millions of dollars" and a "year of anarchy and bloodshed. The year had gone. The thousand millions of dollars are sunk in the ruts of our artillery in the South. The blood is shed. The blood that pays the ransom of the negro is poured out and the money of the Government went with it," so that those who refused the offer, may now "eat the bitter fruits of their folly."

The slaveholders had no longer a claim upon the Federal Government for compensation, since the "United States never granted them slave property." If the State enfranchise the slaves, the loss to the owners is analogous to that occasioned by a change in the tariff, which Davis had seen destroy "values infinitely greater than the value of the slave property of Maryland," without any one proposing to

"compensate the broken manufacturers of Massachusetts and the iron dealers of Pennsylvania or Maryland."

"Negroes are no more property by the law of nature than white men." The slaveholders had their compensation, by "robbing the State Treasury of the taxes" upon the slaves' "real value;" by the "improved value of their lands," especially in "Southern Maryland, where everything that smiles and blossoms is the work of the negro that they tore from Africa;" and by "four generations of uncompensated labor." No political party would dare to go into a canvass and advocate doubling the war debt by compensating owners for their slaves. "There is scarcely a household where there is not one dead," continued Davis eloquently, "there is scarcely a household where children are not lacking for some of the comforts of life, by reason of this great war, and their wants must not be increased to give luxuries to the rich slaveholders. The negro is paid for by the hardships that men are now enduring. He is paid for by the increased price of labor, the increased price of land and bread, the withdrawal of labor from the free States, the converting of an immense population into an army. This is the pay for it. It is paid for by the iniquity of the rebellion and they will get no other pay but the suppression of the rebellion." He closed, by

urging all Baltimoreans to vote for a Convention, "which not merely rids her commercial wealth of the burden of being in a slave State, but restores to her political equality with all the free regions of the State." On October 12, 1864, the new State Constitution abolishing slavery was adopted.

During the first six months of 1864, the breach between Lincoln and Davis had so widened that, on May 13, Governor E. D. Morgan, of New York, told Secretary Welles that the hall in which it was expected that the National Republican Convention would meet had been hired by the malcontents through the treachery and connivance of Davis.<sup>84</sup>

Overtures were made Davis of support for the vice-presidential nomination, if he would support Lincoln, but he indignantly replied: "What! Desert a cause for my personal preferment."<sup>85</sup>

The National Union Convention met at Baltimore on June 8 and unanimously renominated Lincoln for the Presidency. Davis, who would have preferred Chase or Wade, was seriously disturbed by the nomination. The proclamation of the President and the raid of Early into Maryland in July increased his disturbance. He feared that, with Lincoln as its standard-bearer, the Union party might even lose the election, and so participated in a con-



ference held in New York City at the end of July, in the hope of securing Lincoln's withdrawal.<sup>86</sup>

Later in August, Davis wrote Charles Sumner, taking a cheerless view of the prospect and seeing small chance of success against Executive influence.<sup>87</sup> He advocated a new candidate for the Presidency, and vouched Wade as a supporter of such a man.<sup>88</sup>

Davis was not one, however, to sulk<sup>89</sup> in his tent, and, though he was not renominated for Congress nor invited to take part in the canvass in Maryland, he spoke under the auspices of the Union League in Philadelphia on October 25.<sup>90</sup> His friends knew that he would neither yield to their persuasions, nor to the "threats and imprecations of enemies." He bent to no considerations of "policy," but was unbending in his attitude towards all questions. He could subordinate personal considerations to those of public interest. No act of his life is nobler or more statesmanlike than the delivery of the eloquent Philadelphia oration. Bitterly and rightfully opposing the policy of the President, disappointed in his hopes of a renomination for Congress, but yet convinced that the success of the effort to put down the rebellion demanded Lincoln's reelection, with fine magnanimity he sprang to his support. Davis began his address with a

statement of his beliefs, that "the canvass in which the American people are now engaged is very much the most momentous that the history of the world, or of free government, has produced. If it succeed, as in my judgment it will succeed, in placing in power the men who have conducted the Government through this awful crisis, till safety begins to be visible, a result will have been accomplished which will forever place the capacity of the people of America for self-government beyond cavil—beyond the reach of question—for they are called to vote for the election of a man who has presided over the Government in circumstances altogether unprecedented, during a time when vast sacrifices have been exacted and vast sacrifices have cheerfully been made by the mass of the American people; when enormous taxes have been imposed; when enormous armies have been raised; when great results were expected and great results have not always been achieved; when disaster has perched upon the national banner as often as victory; and when the great preponderance of our resources in men and money, while gradually and steadily eating toward the heart of the rebellion, have not reached it with that promptness, have not crushed it with that decisiveness that our hopes led us to expect when the war broke out. Under these circumstances,

judged by the history of the world, discontent, dissension, the lack of spirit and of energy, divisions at home, dictating tones from abroad, popular submission, popular bewilderment, were what we were entitled to expect—nay, what we were bound to expect. Instead of that, what do we behold? The great mass of the American people having, as it were, been surprised into the renomination of the present candidate—then for a moment pausing, as if frightened at what they had done—then listening to the first echo from Chicago, and forgetting every doubt, throwing aside every hesitation, subjecting every criticism to the dictates of the highest reason and the highest statesmanship, as one man, turned to the candidate whom before they had doubted, with a resolution that they must make an election—not between two individuals, not between the personal qualities of Abraham Lincoln and George B. McClellan, not between the public services of the one or the other, but an election between the overthrow and the salvation of the Republic.” There is no wonder that the audience here interrupted the speech with loud applause. He subordinated his personal dislikes and differences of opinion to the great question, “what do we wish to accomplish?” and, without hesitation, said that “I, and thousands like me in America,” will vote for Abra-

ham Lincoln, because, "if we desire a change, we cannot change now without bringing ruin upon the Republic; and, for that reason, every doubt is subordinated to the great necessities of empire." "Great sacrifices," he continued, "heretofore made, are to be thrown away, if you come to one judgment, and to be fruitful in blessings, if you come to another judgment." The decision must be made solemnly, with full consciousness that it means continuance of the war, that "it dooms fifty thousand men to death, and that they have to come from your brothers and your sons;" that it determines "whether the fabric of government reared by our fathers shall remain untouched, whether the integrity of republican institutions shall be preserved." He had "never for a moment hesitated" in his belief "that the mass of the American people, taxation, bloodshed, failure to the contrary notwithstanding, are for the war as the only path of safety. Not because they want bloodshed, but because they want peace; not because they want to subjugate their fellow-citizens, but because they are determined all shall be free." Consequently, when the Democratic platform expressed a "doubt as to whether the war was to proceed," the people's judgment was settled as to the candidate. It is not desired to restore the

Union "as heretofore," when Buchanan was President, and the nation was humiliated.

The Democratic success would mean to the Union "its submission to Southern dictation, its destruction before Southern rebellion, dissolution and death, and not preservation." The Democrats advocate a cessation of hostilities, opening the door for foreign intervention. If the Confederates refuse to make peace, "how will you ever take up the musket, after it has been laid down?" It was clear that "the cessation of the war means the end of the war—that the end of the war means the end of coercive measures for the restoration of the Republic." McClellan's backers were Peace Democrats, and would "repeal every law on the statute book for carrying on of the war," disband the negro regiments, and "remove the suspension of the habeas corpus, in order that Democratic traitors might walk at large and communicate with the enemy." The Republicans have "struggled, to the best of their ability, be it poor or great, for four years to carry on" the war, and "if they are not stripped of power now, will, in a reasonable time, put an end to it." There is no other way of "restoring the integrity of the Republic than by the bloody paths of war." Davis had taken that position in the fall of 1860, and never swerved from it. He saw clearly, from the time of the secession

of South Carolina, that "the only path to unity in this country is over bloody battle fields."

The people must not be deluded. "You may be near the end of the rebellion, but there is many a sharp struggle before you yet, and the only way to end it is to let the rebels have no rest, to press them on, day by day, and night by night, filling up the gulf between you and them with your dead sons and brothers, if necessary, but remembering that every week of armistice, every day of delay, every month of winter quarters means other hetacombs to fill up the gap in your march." The Democrats raised objections to Lincoln's conduct of his administration, but Davis boldly cried that "the Republican party stands at his back and takes the responsibility of what has passed before." Mistakes had been made, "yet the substantial things of government had been done better than our antagonists could do them." Striking at the central point of the campaign, Davis averred that "the question is not whether Mr. Lincoln has done the best that any mind could conceive, nor even the best that he himself could do, nor whether what he has done is absolutely right, or absolutely in accordance with law; but the question is whether his opponent would do better." This question Davis unhesitatingly answered negatively, saying that the "greatest of all fail-

ures" during the war was the "failure of George B. McClellan," and that to that failure, more than to any other cause, the duration of the war was due.

The Democrats objected to the violation of the rights of personal liberty, but Davis replied that liberty stands in the same category with life. "How many men has Abraham Lincoln shot down, according to the law, because they stood in grey clothes before men in blue clothes?" Why are the captured Confederates confined? "May men furnish the enemy with munitions of war, or clothes, or information, or give them aid and comfort, or send them medicines, and yet not be within the range of indictment for treason, or at the option of the country, the military security of a discretionary arrest?" It is true that Lincoln suspended the writ of habeas corpus illegally, as Davis warned him, in the first year of the war; but in 1863 Congress suspended it legally.

What is McClellan's record? In September, 1861, he was "the first man that took a step in the direction of arresting without judicial process," when he ordered General Banks to seize members of the Maryland Legislature who had Southern sympathies. Davis believed that, on the whole, "more men have been improperly discharged than have been improperly arrested," but he was certain that, with

McClellan's record, he is not the man to impeach the conduct of the President as to arrests." McClellan's action was taken when "there was no armed foe in Maryland."

The Democrats also alleged that "military power has been brought to bear illegally upon elections, and Reverdy Johnson had recently made such imputation." Here again Davis was able to point out the inconsistency of the Democratic position, by calling attention to McClellan's order of October 29, 1861, to General Banks in Maryland, not only "to protect Union voters and to see that no disunionists are allowed to intimidate them," but also "to arrest and hold in confinement till after the election all disunionists who are known to have returned from Virginia recently and who show themselves at the polls." He further authorized Banks to suspend the habeas corpus act, in carrying out these instructions, and gave the "first example in the United States during this war of an attempt to prevent rebels from voting." McClellan used the wider term of disunionists, yet Johnson, without complaining of the order, was a successful candidate for the House of Delegates at that election and was elected to a seat in the United States Senate<sup>91</sup> by the Legislature then chosen.

Since the Democrats claimed that, if successful, they would carry on the war on Christian



principles, Davis showed, by the warfare of England, France, Russia and other European nations, that "there never has been a war conducted upon principles that could be called so nearly Christian, excepting that the only Christian principle I can apply to the conduct of war is that it shall be short, and sharp, and merciful. And the danger of this war has been that the President could not rise to the height of the emergency and steel his heart against what was pity in the individual, but cruelty in the ruler." Davis held that war meant the "greatest destruction in the shortest time. That is mercy and that is wisdom."

The Democratic party, he believed to be disloyal at heart, and he considered it no idle threat that they had adjourned their convention to meet at the call of the National Committee. He feared that if the election of President should depend on the vote of the Border Union States, the Democrats would allege that the election was illegal and would try to overthrow the Government. He was confident, however, that a majority of the Free States would vote for Lincoln, and advocated prompt action.

The Democrats asserted that "the policy of the President has divided the North and united the South," but Davis replied that the North had never been united, for there "never

was a day that the great mass of the Democratic party and its chief leaders were not opposed to the war." As to uniting the South, that was done by the firing on Sumter and the battle of Bull Run, as McClellan's own testimony in 1861 proved. From that time "the South united themselves to gain their independence." Again turning to McClellan's record, Davis showed that in July, 1862, he had favored the "right of the Government to appropriate claims to slave labor permanently to its own service," and was willing even to extend this confiscation to "all the slaves of a particular State, thus working manumission in such State," whether it be loyal or not. He was thus several months ahead of the emancipation proclamation, in which proclamation Davis believed the President overstepped "his legal authority."

In 1862 the country had been divided, with the majority against the Administration. Now the "majority is on our side," the "radical maniacs" have turned out to be "wise statesmen. Energy, for the thousandth time, has been shown to be stronger than hesitating weakness. When a thing is to be done, the shortest way is the best way to do it, and brings strength and energy with it. The country to-day stands committed to this: the end of the war, the integrity of the Government, and the

extinction of the cause of the war—slavery.” Our strength has grown in proportion as the “Black abolitionists” have “got near the President’s ear and the men of the Blair school have got far from it.” He traced the progress of events, freeing of slaves who aided the rebellion; prohibition of return of fugitives; emancipation in the District; enlistment of negroes; proclamation of freedom, which will not be law until Congress shall act, but which was “an utterance, though illegal, in the right direction;” the admission of West Virginia on condition that she should abolish slavery; emancipation in Missouri; the enlisting of negroes as substitutes for whites in Maryland; the law which declared that bond and free owed military service on the same conditions; and, finally, emancipation in Maryland. Davis had felt bitterly the lack of support from Washington in the struggle for victory in Maryland, and said that only Stanton and liberal gentlemen in Philadelphia and Boston had given encouragement and aid to the making the State free, by the “untouched and untrammelled vote of her own citizens.” The Republican party then stood “more united, stronger, agreeing better in opinion, more resolutely determined to meet the public enemies, more united about the instruments that we shall use to smite them down, than at any other period.”

Davis hoped that the men who advised Lincoln to give a pocket veto to the bill to secure freedom to the slaves, would not repeat their advice, for it would be clear that "the mass of the American people are resolved that no slave shall breathe the American air." In this peroration he insisted, with eloquence, that the people needed "resolutely to determine that, having gone through the greater part of the suffering which they will be called upon to endure during the war, they will only endure a little longer, they will only not fail in the very hour and crisis of victory; for he that holds out the longest is sure of the victory. The only criterion of a great nationality is the capacity of endurance." If we endure as the Romans did, we shall surpass their state in greatness.

The second session of the Thirty-seventh Congress saw Davis's last appearance in public life and found him ardent and forceful as ever. At the very opening of the session,<sup>93</sup> he made an unsuccessful attempt to have an amendment to the Constitution reported, permitting export duties to be laid, and he secured the reference to the Election Committee of a petition from Louisianians, protesting against the seating of persons claiming to have been elected to the House from that State.<sup>94</sup>

On December 15, still protesting against the

foreign policy of Lincoln in reference to Mexico, Davis offered a resolution similar to the resolution which he had presented on June 27, but the House was no longer swayed by him. A Presidential election had intervened and the resolution was laid on the table by a vote of 69 to 63.<sup>95</sup> Smarting under this defeat, Davis immediately asked to be excused from the Committee on Foreign Affairs, since he differed from the majority of the House.<sup>96</sup> He recited the unanimous passage of the resolution of April 4, and the fact that three days later Seward "directed our representatives abroad virtually to apologize to the French government for the resolution," and even "presumed to impeach Congress of usurpation in undertaking to prescribe to the President rules to govern his foreign policy. That correspondence was made the subject of a circular by the French government to all the governments of the world, and in the debates in the French Assembly the world was given to understand that the resolution was a vain and presumptuous usurpation." Seward's letter "was in a tone that was not respectful to the dignity and authority of the House of Representatives." Davis maintained that "The Secretary of State, before all Europe, in a matter of the greatest moment, slapped the House of Representatives in the face, and the House of

Representatives says it will not even assert its dignity." The members of the House hastened to assure Davis of their confidence in him. They had yielded, because there was nothing to be gained by further protest. S. S. Cox supported Davis's position as to Seward, but would not vote to excuse him from the committee, and testified to "his ability, to his earnestness, to his energy, and to his outspoken integrity." Blaine could not support Davis, but could not excuse him from the committee. Thaddeus Stevens, who took Davis's view of the action of the Administration, urged Davis not to consider the vote of the House as a personal reflection upon him. Boutwell said that the majority cast no reflection on Davis, and that "no gentleman enjoys to a greater, if to an equal, extent the respect and confidence of members on this<sup>97</sup> side, and, as far as I know, on the other side." Davis's resolution went too far. The President should be arraigned for disregarding the expressed judgment of Congress, when only one House had expressed such a judgment. Farnsworth expressed his high opinion of Davis, and said that he had moved to lay the resolution on the table without disrespect for Davis.<sup>98</sup> Davis closed the debate, saying: "I have been brought up on defeats; I have lived in minorities." Only

one member of the Committee on Foreign Affairs dissented from the resolution, which was caused by the fact that "a free nation on our borders lay bleeding in the talons of the French eagle, and a vagrant adventurer, who had never seen the soil of Mexico, called himself her emperor." The precedents showed that Congress had the right to declare and prescribe foreign policy, and not the President alone, as Seward asserted. Davis distinguished between his position as chairman and that of a member of a committee, and stated that he felt that he was not the representative of the House on this question. He was not willing to submit to a surrender of the power of the people, and asserted that a Congressional vote is not a proper subject of executive criticism. The House refused to excuse Davis from his position. Four days later he reintroduced his resolution,<sup>99</sup> and when Farnsworth again moved to lay it on the table, Davis won by 73 to 49. He then moved the previous question, and carried it by a vote of 71 to 56. The resolution was divided, and then the former part was adopted by a vote of 118 to 8, and the latter by a vote of 68 to 58.

Of this victory, Davis's bitter enemy, Welles, wrote:<sup>100</sup> "There is a disposition to make the Legislature the controlling power of the Government. The whole was conceived in a bad

spirit, and is discreditable to the getters up and those who passed the resolutions. Davis has never been and never will be a useful member of Congress. Although possessing talents, he is factious, uneasy and unprincipled. He is just now connected with a clique of malcontents, most of whom were gathering a few months ago with Chase.”<sup>101</sup>

Davis's hostility to the Administration was shown<sup>102</sup> by his speech favoring investigation of military imprisonments. John Ganson, of New York, had moved to have a jail delivery from the old Capitol and Carroll prisons. Stevens opposed the motion, while S. S. Cox favored it, and afterwards wrote that Davis placed “the matter on the highest ground.” He demanded that the committee examine the facts and spread them before the American people. “This is bold ground. It is worthy of the parliamentary heroism in the time of the Stuarts and their prerogative. It is an audacious act in a member of the dominant and arrogant party.”<sup>103</sup>

The law suspending the writ of *habeas corpus*, in Davis's opinion, allowed too limited a discretion to the President, but, being law, should have been obeyed. “This suspension is not a substitute for the criminal law, but is political in its character, merely precautionary to avert dangers, not to punish crimes; it



looks to the future, not to the past; it is, in war or in grave political danger, what security to keep the peace is to the daily administration of justice. I am ready to vote to enlarge the liberty which it confers upon the President, but shall vote to stop the abuse of continued, perpetual and reiterated disobedience to law." He maintained that the resolution was not unnecessarily censorious, in reference to Lincoln, or his Cabinet officers; for "many abuses connected with a war of this magnitude may not come to their knowledge." In Maryland, for example, arrests have been made by a person calling himself a provost-marshal, a term not known to the National laws, who acted absolutely without the knowledge of the Secretary of War. "The very independence of American character is being broken down under the unchecked license of military arrests, and people come to believe that the existence of a state of war justifies anything in the shape of discretionary and arbitrary authority on the part of military officers." Men were afraid to complain and, thereby, incur the displeasure of the military authorities. The Secretary of War had "endeavored to mitigate the abuses, but oppressions are inseparable from illegal arrests." Garfield joined Davis, the measure was passed, and a reconsideration refused by a vote of 136 to 5.

When the Legislative Appropriation Bill was debated,<sup>104</sup> Davis said that he usually followed the Ways and Means Committee with half an eye, but he now opposed an increase in a salary asked, because of depreciation of the currency, as he thought the remedy lay in improving the currency. He was willing to vote for an increase in a salary, when it was inadequate on its original basis and had no just proportion to salaries paid for like services in the ordinary business of the country. He also promised to support any measure which tended to deduce the volume of the currency and thereby to add to its value.

On the next day, in pursuance of the same hard money principle, in Committee of the Whole, he objected to the issue of more treasury notes and maintained that, although the notes be not a legal tender in form, their value would be the same, since they were susceptible of use in ordinary exchange and, therefore, they would inflate the currency. "I am not willing to put in the hands of any officer," continued Davis, "the power to issue one more dollar to be converted into a circulating medium." He believed that the needs of the Government should be supplied by loans and offered a motion that notes, issued to pay the expenses of government, be not legal tender, nor be of a less denomination than \$100. He

carried the House with him, by a vote of 54 to 39; but Thaddeus Stevens stated that, if this amendment remained, he would not ask to pass the bill. When report was made to the House, the provision was stricken out, by the narrow margin of 60 votes to 63.

A month later, when the loan bill was before the House, Davis moved<sup>105</sup> to strike out provisions that the interest should not exceed  $7\frac{3}{10}$  per cent. and that the rate of interest be expressed on the bonds. He said that, under the bill, the Secretary of the Treasury might issue coupon bonds, or treasury notes, and increase the inflation under which the treasury suffered. "You have not disposed of the currency question, when you have disposed of legal tender bank notes, which are what have, in great measure, inflated the currency." Davis asserted that "Currency is anything that is in such form and has such value that it will pass, conveniently and readily, from hand to hand in lieu of coin." The Government made notes legal tender, in order to compel acceptance of them and the act would have been equally effective, whether or not those notes had a value independent of that given them by the coercive authority. Without such coercive power, "if the Government issues treasury notes, subdivided into sums, which will answer the pur-

poses of currency, in such sums as will pass from hand to hand in the daily commerce of the land, so long as the credit of the Government is equal to the credit of a bank, the treasury note will stand as a bank note and, if there be two treasury notes, while the market only calls for one, there will be a corresponding inflation of currency and corresponding depreciation of value." Whether "we shall adopt a specie basis," or issue currency notes to pay interest, was a question on which Davis entertained serious doubts. "Doubtless, it would be very convenient to permit the Secretary of the Treasury to put the credit of the Government in any form that would suit the convenience of the occasion, but it is a matter of life and death that there should be restored a normal ratio between the currency of the country and the standards of value—gold and silver."<sup>106</sup> He wished to reduce the "enormous volume" of the currency and believed that "now, when we can see the end of the rebellion, the credit of the Government can raise by loan what is needed." Every note of the United States, of a denomination under \$50, passing from hand to hand, inflated the currency. "If you double the currency, you must double the taxes and, if there be any one thing true, both in point of common sense and political economy, it is that every step you

take in the direction I have indicated is a step towards lightening the burdens of the people, restoring the rates of value, and making that which is the nominal standard of value approximate to the real one." On February 28, Davis followed his speech by moving that no note, hereafter issued by Congress, shall be a legal tender and that no treasury note be issued for a less sum than \$50, but he was defeated by a vote of 55 to 86.

On January 30, Davis made the first of several speeches, advocating the establishment of a Board of Admiralty.<sup>107</sup> On February 3, Davis again advocated his proposal.<sup>108</sup> The condition of the navy and the danger of war with foreign powers, "so soon as the rebellion shall be suppressed," made "it a matter of vital moment that we should not be deluded by any apparent strength." He had drawn up his proposition, after conference with the "first officers of the navy," who, like him, trembled at its present condition. The naval committee had deliberated upon it for nearly a year, yet they refused to report it, so Davis tried to incorporate it as a rider to the Appropriation Bill and have it freely debated. He bitterly said that there was little chance of the success of his measure, since the administration opposed it, but he wished to force a vote upon it. During the War, Secretary Welles

and "his irresponsible Assistant Secretary, who <sup>108a</sup> is the real and acting Secretary," had changed the navy to convert us into a first class naval power, but most of the ships they had provided would be of no use in a war with a European power, as Davis showed in great detail. The most of the vessels had been useful in a civil war, but would be useless in a foreign one. He then discussed the English and French plans of naval administration and maintained that his plan copied their excellencies. The Secretary was left free to act, but only after he had advised with "men of professional standing, competent ability, and of high and permanent rank." Previously, there had been such temporary boards; now there should be a permanent one. During the war, a lack of responsibility had led to "the rash empiricism, the scandalous improvidence, and the costly failures which mark the administration of the department." He believed that "half a dozen rebel cruisers could not have swept our commerce from the ocean, or driven it to take refuge under foreign flags, and destroyed many millions of property, and lighted every sea with the conflagration of our ships for three years, had any body of competent naval officers been invited to devise a systematic plan for their pursuit and capture."

With proper advice, the Port Royal expedi-

tion could have been followed by the fall of Savannah and Charleston, instead of being left "barren to the nation of half its rightful fruits." Davis was not "seeking to cast imputations upon any one;" but endeavored "to expose the evils of a merely personal and irresponsible administration of the department" and to propose "an adequate remedy." He then proceeded to attack the policy of building monitors, whose usefulness he decried. Rather should the *Ironsides* have been multiplied, as it "met the approval of naval officers." He claimed that the popular clamor and the "pressure of iron contractors," not the advice of naval officers, produced the orders for the building of monitors, and that such vessels had failed, by the confession of the department, and had been found as useless "for a sea-going vessel of war" as well as "to go in shallow water." After a detailed statement of his position, he closed his speech with the assertion that the course of the department showed "the necessity of some supervising board," to "secure to the nation the money that it is now expending in the structure of vessels."

On the following day, Davis spoke for the third time, referred to Farragut's capture of Mobile with wooden ships and said that his opponents grossly misrepresented his proposition.<sup>109</sup> On the sixth, Davis made his last un-

successful effort to carry his point.<sup>110</sup> He spoke with great bitterness, accused the Naval Committee with failing to treat his proposition with "ordinary fairness," or to show that they had even read it.<sup>111</sup> They had accused him of being in "ill temper," but that accusation did not "affect the value of the measure."

He retorted that he had not a personal acquaintance with either Welles nor Fox, that he had not received favors from them as had two of the three members of the committee who had replied to him, nor was he interested in the construction of ironclads, as was the third member who had spoken in reply. His opponents had charged him with copying the British Board of Admiralty, and that the Naval Commissioners of 1815 in the United States had been such a board as Davis described. These statements, Davis denied and asserted that he proposed "not to remove the bureaus, not to substitute any other organization to discharge their ministerial duties, not to interfere with the free discretion of the Secretary; but to interpose, on the French system, between the administrative discretion of the Secretary and the ministerial obedience of the bureaus, a council of naval officers, whose advice the Secretary may command on all matters, whose opinions he must take on some matters, but which, when taken, he is



free to disregard." He believed that he was supporting the "very foundation" of the American system of government, "that is to have a council of advisers around an executive head, a principle used, indeed, by Napoleon in the early days of his empire." This board of professional officers, appointed by the President, would not "divide the responsibility," nor delay the Secretary's judgment, but put "light around him." Such a Board would have more weight than one merely summoned by the Secretary. After another extended attack upon the monitors, Davis returned to his favorite theme, the exaltation of the power of Congress and maintained that, so "long as Congress will not assert its supremacy over the departments, and prescribe such organization of them as will give this nation the benefit of its resources, so long as Congress stops to inquire what the departments wish, instead of imposing on them what the interest of the nation requires; we will be powerless before the nations of the world." He insisted that he was "pleading the cause of the American navy against the Navy Department" and instanced, as proving the despotism of the department, the case of Admiral Wilkes, who had been punished "for controverting statements in the report of the Department, seriously affecting his honor as an

officer." In conclusion, he insisted that he was not influenced by his "estimate of the personal value" of Secretary Welles; but looked to "the day, when the American nation will have to vindicate its power before the nations of the world, now insidiously seeking its ruin, not by stealthy depredations on unarmed traders, but with a navy bearing proudly the banner of the republic over the seas."

Ashley's bill for the reconstruction of the seceded States had been postponed, in January, against Davis's wish.<sup>112</sup> His breach with the administration was wide<sup>113</sup> and the parties on either side of it were bitter in their remarks concerning those on the other one.<sup>114</sup>

In his brief, vigorous speech on February<sup>115</sup> 21, which closed the debate upon Ashley's bill, Davis reiterated the position he had previously taken, but with an advance, for the bill provided that all citizens of the United States, instead of all white residents, should be enrolled as voters. In general, the bill was the same as that passed at the last session. Some had voted for it before, who opposed it now, because it was the "will of the President that has been discovered since the bill had been passed." Davis prophesied that "the course of military events seems to indicate that, possibly by the fourth of next July, probably by December, organized and armed

rebellion will cease to lift its brazen head in the land." "If this bill," therefore, "does not become a law," and Davis gloomily feared its defeat, when Congress again meets, "at our door, clamorous and dictatorial, will be 65 representatives from the States now in rebellion and 22 Senators claiming admission." "You can prevent the rise of the flood now; but, when it is up, you cannot stop it." These claimants of seats will be either those who have been rebels or, like those chosen in Louisiana, "servile tools of the executive," who will be supplanted by "rebel representatives" after two years. A declaratory resolution will not be sufficient, stating that members of Congress shall "not be received from any State heretofore declared in rebellion, until a joint act or resolution of Congress shall have declared that they have organized a new government." There must be a law forbidding an election, as was done in the proposed Statute. After such a law, for the President to sanction such an election "would be an impeachable offence and, if he did not sanction it, the question would never be here to trouble us." The provisional governors ought to be appointed, according to law, and the President should not remain "in power, with no law to guide him." Ten years before, the United States Government was one of law. Davis had "lived to see

it a government of personal will. Congress has dwindled from a power to dictate law and the policy of the government, to a commission to audit accounts and appropriate moneys, to enable the executive to execute his will and not ours." Dawes had charged that the bill revived the "black laws of the South." Davis denied this charge and stated that the law provided that both negroes and whites were "to be tried by the same court, under the same law, upon the same evidence, for the same crime." There was "no time fixed, within which the provisional governor must call upon the people to elect whether they will exercise a State government or not," for that matter was necessarily left to his judgment. The real objection was not to the length of time of the rule which the bill prescribed, but to the prescription of any rule at all. Davis would not agree that one-tenth of the voters might "stain the national triumph, by creating a low, wretched, vulgar, corrupt and cowardly oligarchy to govern the free men of the United States—the national arms to guarantee and enforce their oppressions; not by my vote, sir, not by my vote." He insisted that the House must "say whether it prefers arbitrary discretion or legal rule;" whether or not it would "erect a barrier now" to prevent "the pressure of the times and the clamor of the day" from overwhelming their successors.

In spite of all Davis's efforts and his alliance with Stevens, the bill was laid on the table by a vote of 91 to 64 and his defeat was complete.<sup>116</sup>

At the very end of the session,<sup>117</sup> when the Miscellaneous Appropriation Bill was on its final passage,<sup>118</sup> Davis delivered his last Congressional speech in behalf of an amendment that no person should be tried by a court-martial, or by a military commission in any State or Territory where the Federal Courts are open, except persons actually in military or naval service, or rebel enemies charged with being spies, and that all proceedings contrary thereto should be void and the persons held in custody through such proceedings should be discharged. He maintained that that his amendment cast an "imputation on no officer; but, recognizing the error which the people, as well as the Government, have, in common, committed against the foundation of their own safety, now, before the very idea of the supremacy of the law has faded from the country, to restore it to its power."<sup>119</sup> The amendment was confined in its operation to civilians in the loyal States.

The Speaker ruled the amendment out of order, as not germane to the bill, but the House overruled him by a vote of 50 to 65. Stevens then opposed the proposition, saying

that debate should not be delayed. Davis denied ever embarrassing "the proceedings of the House by any pertinacious adherence to schemes of my own," as he insinuated had been done by Stevens. "Such a proposition" as this amendment "will never be out of place while the voice of liberty is heard." Davis had watched the "gradual intrusion of the military on the rights of the citizens, from the outbreak of the rebellion," when McClellan "set the bad example, in an order illegally suspending the writ of habeas corpus in Maryland." There had been unconstitutional usurpations, which ought not to be continued. The ridiculousness of the military position was shown by the fact that a Baltimorean had been placed in prison by a military tribunal for counterfeiting Confederate currency! Davis well said that "I can state no other fact that will better illustrate the insolence of irresponsible military tribunals, known to no law, appointed under no law, restrained by no law, authorized by nobody." When Stevens interrupted, saying that a "man who was fool enough to spend his time in such work ought to suffer some severe punishment," Davis wittily retorted that: "If all fools are at the mercy of the military courts and they are to judge of it, they have a wide jurisdiction." When Davis had been asked to importune Lincoln

for the pardon of a man convicted by a military commission for selling goods to a government spy, in the belief that they were to be sent into the Southern Confederacy, he had refused to "beg, as a favor, the personal liberty of an American, illegally and oppressively condemned," especially since "the President had twice refused to refer his case to the courts of the United States." He was alarmed, because military courts try "loyal men in loyal States, where no war rages, for violation of what they call the usages of war," and thus annul every act of Congress. Even guerrillas, such as are captured in Kentucky, should have a civil trial. He held that the demand for military courts came from the fact that a "sharper and easier way to deal with criminals as enemies" was desired. "It is the cry for vengeance and not justice." Maryland was a State that had "been disturbed by internal dissensions," and Davis feared to permit "military tribunals to apply their harsh, sharp vengeance between men who live on adjacent estates, at the instigation of personal revenge, of malice, without local public trial, unprotected by the rights secured to them by the Constitution and the laws." If men "have committed acts which render them dangerous, but are not criminal, or can not be proved, we have authorized the suspension of the habeas

corpus," and that is a sufficient safeguard. A provision declaring acts of military commissions void should be placed in the law, so that a loud voice "may go out to the people, announcing that their representatives recognize that fact, and encouraging the people to seek redress," not by crawling solicitations at the hands of the President of the United States, but of right by law, before the courts, which are the glory and the safety of the American Republic." As a military commission had no jurisdiction, condemnation by that tribunal would not be a conviction to prevent a court trial. "Public safety never has required these illegal and summary trials; it now requires that they cease." Davis had prepared his amendment, after careful thought and frequent consultations, and was not willing to change one word of it. John F. Farnsworth, of Illinois, rose to insist that the vigorous measures of the President had alone saved the day in Maryland, but Davis came to the defense of the loyalty of the State with the assertion "that there never was a day when the people of Maryland were not masters of her fortune and masters of the Capital of the United States, and that Mr. Lincoln was inaugurated there only because they were loyal." There had been no need for Lincoln to flee through Baltimore. Farnsworth con-



tinued, emphasizing the need of military tribunals and regretting that Davis should make a speech on which he received congratulations from Democrats such as Harris, of Maryland, and Voorhees.

Of Davis's part in this debate, S. S. Cox<sup>120</sup> wrote that he "rose again to a height of grand argument in favor of personal liberty." His speech was "an awakening to those who were then with us." He "reproduced the eloquence of Pinkney, with the cogency of Wirt." After the speech, "amidst the wildest applause, the three years of arbitrary arrogance were buried beneath the reprobation of the House of Representatives," for the "popular branch of Congress<sup>121</sup> rose above all debasing thought to listen to the teachings" of Davis. "It is due to the memory of Henry Winter Davis," Cox adds, that "the new generation should know and appreciate the courageous and the intellectual stamina of that most gifted orator."

The House agreed to Davis's amendment by a vote of 75 to 64, but the Senate refused to concur therewith. The committee of conference failed to agree, and Davis reported for them, on March 3,<sup>122</sup> advocating the failure of the whole bill, rather than the withdrawal of a provision "touching so nearly the right of every citizen to his personal liberty and the very endurance of republican institutions."

The committee recommended that this law be left "standing as a broken dike in the midst of the rising flood of lawless power around us, to show to this generation how high that flood of lawless power has risen, in only three years of civil war, as a warning to those who are to come after us, as an awakening to those who are now with us." He would permit no item of the bill to pass, not even the appropriation for the insane, and as the House agreed with him, the bill failed.<sup>123</sup>

## NOTES ON CHAPTER IX.

1. 9 Nicolay and Hay, 113.
2. Nicolay and Hay say that Lincoln did all in his power to heal the breach with Davis, but elicit this as their only proof.
3. War of Rebellion Off. Recs., Series 3, vol. 3, p. 877.
4. Outcome of the Civil War, p. 73.
5. On December 15.
6. Vide McCarthy, Lincoln's Plan of Reconstruction, p. 224.
7. On January 29.
8. McCarthy, p. 57, animadverts to the fact that Davis alone of those who spoke approved the action of the military governor. On December 17 Davis voted with the majority, when, by a vote of 67 to 90, the House condemned Harrington's Resolves condemning arbitrary arrests. On January 11 he introduced a bill requiring certain persons to take the oath of allegiance.
9. This proclamation accompanied the President's annual message to Congress and surprised the people. It offered amnesty to the majority of those in rebellion, upon their taking an oath to support the Union in the future as well as the legislation and proclamations which had been made concerning slavery. When at least one-tenth of the voters of any State should take such an oath and should re-establish a republican

form of government, that government would be recognized by the Federal authority. The proclamation further stated that Lincoln would welcome the abolition of slavery in any such State. In his message Lincoln defended the proclamation as constitutional and wise. In his comprehensive and fair life of Lincoln, in the American Statesmen Series, Morse (vol. 2, p. 228) does not sufficiently recognize the constitutional objection of Davis and those who agreed with him to the President's taking upon him to "guarantee" to a State a "republican form of government," rather than leaving this guarantee to Congress.

10. On June 29 he moved again to lay on the table the whole subject of representatives from Arkansas, and won by a vote of 80 to 46, while 56 members did not vote. On May 23 he objected to paying a Virginia contestant who held a Federal office, as, if he were allowed his seat, he would have been allowed only one salary.

11. Speeches and Addresses, 343.

12. Davis maintained that the Constitution meant that "the forfeiture worked must be effected during life," while Cox had argued that "the forfeiture, when worked, shall *endure* for the life of the party." Davis replied that "attainder worked no forfeiture, after the death of the party, except by the corruption of blood." Otherwise, Congress would be able to confiscate lands for other crimes, but not for treason, and for that crime could put a man to death and seize his personal property, but not his lands, and the Constitution would sanction the "un-republican discrimination between real and personal property."

13. Sherman's Recollections, vol. 1, p. 359.

14. On March 22.

15. Speeches and Addresses, 368. 4 Rhodes, 485, refers to Davis as "an orator and a man of brilliant parts, who thought the President's scheme neither coherent nor orderly, and objected to it strongly because it did not contain a sufficient guaranty for the abolition of slavery," who "made an energetic speech." 4 Pierce's Sumner, 217, calls the Davis-Wade bill as liberal as the President's policy, "more conservative in requiring a larger proportion of voters, and wiser, as well as juster, in enforcing, as a peremptory condition of restoration, perpetual abolition of slavery in the States."

16. 9 Nicolay and Hay, 116, speak of it as a "speech of extraordinary energy. Without hesitation, he declared it (the

bill) a test and standard of anti-slavery orthodoxy, and asserted boldly that Congress and Congress alone had the power to revive the reign of law in territory which, through rebellion, had put itself outside law." They assert that in the preamble to the bill (p. 115) Davis expressed, with "habitual boldness and lucidity," his "fundamental thesis that the rebellious States were out of the Union." This, of course, is extremely inaccurate. But Burgess (*Reconstruction and the Constitution*, 18) speaks of the Davis-Wade plan as "nearer to some doctrine on reconstruction" than Lincoln's, and states that the bill contained a "true theory," in claiming reconstruction to be a legislative problem, in requiring loyalty to the United States of a majority of the white males as a basis of local government, and in asserting a power to abolish slavery within the limits of the seceding States, dealing with these as territories, or districts, subject to the exclusive authority of the central government. The theory of the bill was "sound political science, and the President ought to have heeded its teachings."

17. Reprinted in 9 Nicolay and Hay, 114.

18. See Appleton's *Annual Cyclopaedia*, 1864, p. 293.

19. S. S. Cox, *Three Decades*, 435, says Davis's bill, like Lincoln's, had the defect of being "based on the policy of forced emancipation."

20. Outcome of the Civil War, 139. An illustration of hero worship is shown in Hosmer's sentence: "In spite of the bitterness, Lincoln's all-abounding magnanimity wrapped Davis within his regard. The President could not win him, but he steadfastly endured striking a return blow." Vide, 6 Schouler's *U. S.* 469. 9 Nicolay and Hay, 119, say Lincoln refused to exercise influence on this debate.

21. 4 Rhodes, 485; Appleton *Annual Cyclopaedia*, 1864, p. 307; 9 Nicolay and Hay, 120.

22. 2 *Twenty Years in Congress*, 42.

23. Vide 9 Nicolay and Hay, 115, who claim that Davis's design was to put a stop to the work of reconstruction which Lincoln had begun.

24. Vol. 1, p. 361.

25. On December 17 he reported favorably a resolution to have 10,000 extra copies printed of the papers on foreign affairs which accompanied the President's message. On December 19

he secured the passage by the House of a resolution concerning the activities of the French in Mexico. Vide Schouler, vol. 6, p. 432.

26. On February 4 he favored printing ten thousand extra copies of the diplomatic correspondence, as Seward wished done, so as to state our case fully and authentically to the nations of Europe. On March 2 he introduced a resolution requesting the President to send the Mexican and Venezuelan correspondence to the House, and on the 16th he moved to have referred to the Committee on Foreign Affairs the message of the President concerning the claims against Ecuador.

27. Speeches and Addresses, 395. Appleton's Annual Cyclo-pedia, 1864, p. 314.

28. 4 Rhodes U. S., 471; 7 Nicolay and Hay, 407.

29. Vide 4 Pierce's Sumner, 193.

30. Despatches of April 22 and May 2.

31. On June 4 and 6.

32. On June 27.

33. 4 Nicolay and Hay, 407, say that Davis did not "convince a considerable portion of the public that the course of the Government (they mean the President) lacked dignity or fairness."

34. On January 28 he introduced a bill to regulate dismissions of officers in the Army and Navy, and on February 10 he sarcastically proposed that the President order General Lee not to move on Washington until the appeals from the draft were decided. With Thaddeus Stevens, in this month, he opposed as premature the passage of the bill establishing the rank of lieutenant-general (I Blaine, Twenty Years, 510). On April 21 he moved to repay Baltimore for money expended on the fortifications about that city. On July 1 he moved to concur in amendments to the Enrollment bill.

35. On February 10.

36. In like spirit he urged on April 30 and May 25 that the negro regiments be not put on a different basis as to support of families from the white regiments.

37. Speeches and Addresses, 351.

38. Speeches and Addresses, 351.

39. On July 1.

40. Speeches and Addresses, 410.

41. He regretted that illness had kept him from any earlier discussion of the bill.

42. Speeches and Addresses, 353.

43. St. Mary's, Charles, Somerset, Worcester, Howard, Baltimore. Vide Brackett, *Negro in Maryland*, pp. 254-262.

44. In Howard the vote was 55 for and 1397 against; in Kent 74 for, 1502 against; in Baltimore 684 for and 5364 against.

45. Speeches and Addresses, 397. Gideon Welles heard him and wrote in his *Diary* (vol. 2, p. 9) that the speech was "declamatory, eloquent; but the debate did not please me, nor the subject."

46. I *Diary*, 482.

47. I *Diary*, 479. October 31, 1863. When Admiral Dupont died, on June 23, 1865, Welles wrote (II *Diary*, 320), with a vindictiveness that went beyond the grave, that, in October, 1863, Dupont prepared an "adroit letter," in concert with Davis, to be used as an assault on Welles in Congress, but that Welles answered in such manner "as to close up Dupont and Davis got more than he asked."

48. II *Diary*, 117, 118. August 23, 1864.

49. Welles had written as early as January 6 (I *Diary*, 505) that he heard of Davis as being among those "cavilling and exerting themselves to bear down upon the Engineer in Chief." Of the speech on February 25 he wrote that (I *Diary*, 531) Davis "flung his vindictive spite more malignantly at Fox, whom he called a cotton-spinner, than at me." F. P. Blair answered Davis on February 27, regretting his absence from the House at the time and calling him a Jacobin.

50. Dupont commanded the expedition against Port Royal, and wrote Davis on the eve of the attack on Hilton Head, on November 6, 1861. The letter is printed in the *Army and Navy Journal*, vol. 51, p. 1237, May 30, 1914.

51. On April 11 Davis introduced a bill to establish a board of naval administration. On May 16 he asked for the proceedings of the court-martial on Commodore Charles Wilkes. On May 13 Admiral Shubrick told Welles that Dupont, under Davis's "control," was writing a book. (2 *Diary*, 30.)

52. On June 6 he expressed the wish to legalize the acts of the United States District Court for Virginia, which is required

by law to meet at Richmond, but which really met in Alexandria.

53. On January 12.

54. On April 2.

55. In a contest between State and National banks, he wished the support of that bank, and was opposed to the principle of individual responsibility, as being a needless trammeling of innocent persons.

56. On April 4.

57. On July 2 he proposed a ten per cent. tax on State bank notes, and when that proposal failed, a three per cent. tax on the average amount of notes annually in circulation, but failed to carry that proposition also.

58. On June 8.

59. On June 9 he expressed the belief that "in this country fortunes are ephemeral." On July 2 he opposed the grant of the hall of the House for an Independence Day celebration of the National Democratic Association, saying he never spoke in the House except on a legislative subject, and never voted to allow any outside body to use the hall.

60. On June 9 he objected to giving the Select Committee on a New York and Washington Railroad leave to report at any particular time, as the bill might seriously affect local interest in Maryland.

61. On April 9.

62. On May 6.

63. He regretted that Dawes was absent.

64. He quoted Harry Percy's speech, "I remember when the fight was done," and sneered at Dawes's reference to the opening of the Massachusetts elections with prayer, and reminded Ganson, a Democrat from New York, who had spoken against Davis, of past Democratic frauds in Louisiana, New York and Pennsylvania.

65. After this speech, B. G. Harris made an attack upon Davis, which the latter ignored. Harris said that "Massachusetts, in carrying out outrages, was but acting upon principles which the member from Baltimore City was prominent in inaugurating in Maryland and of which he reaped the personal benefit, which it was calculated through force and violence to

confer." He was a "slanderer." The Speaker then called Harris to order. When the latter resumed his attack he said that Davis "consumed an hour in giving history, if statements so false can properly be called history, of himself and his Plug Uglys. Three times has he come to this House by the aid of bludgeons and daggers of the Plug Uglys, and he now occupies his place here by favor of the bayonets of brutal tyrants."

66. Welles knew nothing of it (2 Diary, 98).

67. 9 Nicolay and Hay, 122; Appleton's Annual Cyclopedia, 1864, p. 307.

67a. Kernan vs. City of Portland, 223 U. S. Reports, 118 at 151. See Wm. W. Pierson on Texas vs. White, 19 S.W. Hist. Quar. 2, 22.

68. Vol. IV, p. 219.

69. 9 Nicolay and Hay, 124.

70. Speeches and Addresses, 415. 6 Schouler, 470, says the Davis-Wade manifesto was "violent, and insinuated what was wholly unfair," that Lincoln "meant to reconstruct the South so as to hold electoral votes in pledge." Riddle's Wade, p. 259, calls the manifesto an "admirable performance, saving its tone, reviewing the whole ground" and showing the "world for the first time how widely asunder the President and Congress were."

71. Burgess, Reconstruction, p. 15. Coffin's Lincoln, at page 431, says more wisely: "In their anger the authors of the manifesto overlooked the one question foremost in the minds of the President—the constitutionality of the act."

72. Speeches and Addresses, 428.

73. 2 Welles Diary, 98.

74. 2 Welles Diary, 96.

75. Vol. 9, pp. 124-126.

76. McCarthy, p. 278.

77. On page 283 McCarthy repeats Nicolay and Hay's charge that Davis, "though treated with extreme fairness, not to say generosity, by the President, pursued toward the Administration a course of consistent hostility." Disappointment at not being placed in the Cabinet and Davis's "sense of public duty led him to think Lincoln scarcely entitled to courteous treatment." Forgetting that the manifesto was issued, because Congress was not in session, McCarthy continues by saying that, if Davis believed all he said, he should have impeached Lincoln. The political



departments of government, according to McCarthy, entered on a struggle for power. "Congress had been defeated, and its discomfited leaders sought to relieve their feelings by railing at the President." These sentiments are, of course, unfair and the statement is incorrect.

78. 2 Blaine, *Twenty Years*, 42.

79. 9 Nicolay and Hay, 114, insist, with great unfairness, that the breach between Lincoln and Davis was entirely the fault of the latter. "In spite of all the efforts which the President made," they write, "to be on friendly terms with Mr. Davis, the difference between them constantly widened. Mr. Davis grew continually more confirmed in his attitude of hostility to the President. He became one of the most severe and least generous critics of the Administration in Congress. He came at last to consider the President as unworthy of even respectful treatment, and Mr. Seward, in the midst of his energetic and aggressive campaign against European unfriendliness, was continually attacked by him as a truckler to foreign powers and little less than a traitor to his country. The President, however, was a man so persistently and incorrigibly just that, even in the face of this provocation, he never lost his high opinion of Mr. Davis's ability, nor his confidence in his inherent good intentions."

80. 9 Nicolay and Hay, 114. Coffin's *Lincoln*, p. 464, states that when Fox, the Assistant Secretary of the Navy, said to Lincoln: "I am glad that" Davis "has been defeated. He has maliciously assailed the Navy for the last two years." Lincoln responded: "I cannot quite agree with you. You have more of the feeling of personal resentment than I. Perhaps I have too little of it; but I never thought it paid. A man has no time to spend half his life in quarrels. If any man ceases to attack me, I never remember the past against him."

81. *Speeches and Addresses*, XXVII.

82. *Speeches and Addresses*, XXII.

83. *Speeches and Addresses*, 384.

84. 2 *Diary*, 30.

85. Capt. H. P. Goddard, in *Baltimore Sunday Herald* of March 8, 1903, repeating an anecdote told him by Joseph M. Cushing, Esq. James M. Scovel, in 38 *Overland Monthly*, 204, gives a different version of this story.

86. *Speeches and Addresses*, 415.

87. 4 *Pierce's Sumner*, 251.

88. 4 Rhodes, 518. *New York Sun* of June 30, 1889, printed letters from Davis on August 19 and 25, and from others written in the hope of forcing Lincoln's withdrawal from the Presidential canvass (9 Nicolay and Hay, 367).

89. James M. Scovel, in 38 *Overland Monthly*, 205, says that Davis was present at a White House reception during the campaign, and that, on seeing him, Lincoln said to Scovel: "This looks well for us. Henry Winter Davis has not called at the White House till now, during the three years past."

90. *Speeches and Addresses*, 428. Mr. J. F. Essary, in his *Maryland in National History*, at page 240, states that Montgomery Blair retired from Lincoln's Cabinet in order that Davis's support of the Republican ticket might be secured in the Presidential campaign of 1864. Mr. John T. Graham, who was so intimate a friend of Davis that he made the fair copy for the press of the Davis-Wade manifesto, stated in December, 1915, that he knew nothing of any such arrangement, and that his relations to Davis during that time were so close that it was impossible that he could have been ignorant of the matter.

91. Davis also referred to the riot in Washington in 1857, and to Governor Ligon's course of action, as proving that Democrats had no objection to the use of force at elections when such use would redound to their advantage.

92. Lincoln referred neither to his Proclamation nor to the manifesto in his message. Burgess, *Reconstruction*, 18.

93. On December 5.

94. McCarthy, page 340.

95. Davis's report, which accompanied the resolution, after a careful study of our foreign relations, claimed that the President's action was both "novel and inadmissible" (*Speeches and Addresses*, p. 456). He maintained that "the will of the people, expressed in legislative form by the legislative powers, can declare authoritatively the foreign policy of the nation; to the President is committed the diplomatic measures for enforcing it."

96. *Speeches and Addresses*, 472.

97. *The Republican*.

98. Spalding said he had voted not to lay the resolution on the table, but was unwilling to lend aid to a direct attack upon Lincoln; Dawes jested about the matter; Littlejohn stated that he voted to lay on the table the resolution, because Davis had moved the previous question without debate.

99. Stevens, with Davis's consent, substituted Executive Department for the President.

100. 2 Diary, 202.

101. On January 6, 1865, Welles wrote (2 Diary, 224) that Benjamin F. Butler was in Washington, and, "allied with Wade, Chandler and Davis, he will not only aid, but breed mischief." Yet, curiously, Welles wrote on January 18 of the capture of Fort Fisher, that (2 Diary, 227) Davis, "who for some cause, avoids me, is not satisfied. I do not doubt that he is glad we have succeeded, but he does not like it that any credit should even remotely come to me."

102. On January 18, 1865.

103. Three Decades of Federal Legislation, 233, 234.

104. On January 19.

105. On February 27.

106. He stated that Senator Morrill, of Vermont, was the ablest financier in either branch of Congress, whom he had met in eight years of service.

107. In this speech he spoke of the appointment of cadets, saying that the Constitution conferred this power upon the President but, to stop attacks on the Military and Naval Academies, the Administration had made a rule that the members of Congress should be called upon for recommendations, and thus apportioned the appointments not among the representatives, but among the Congressional districts. After Davis had spoken for some time, Blaine moved that the House adjourn, as Davis was not in "a favorable physical condition." He was unwell again a week afterwards and was excused for absence on account of illness on February 7 and 8.

108. Speeches and Addresses, 480.

108a. Gustavus Vasa Fox, closely connected with Montgomery Blair by marriage.

109. Welles wrote on that day (2 Diary, 236) that "the move was sneaking and disingenuous, very much in character with Davis, who is unsurpassed for intrigue and has great talents for it." Welles added that the English were thinking of abolishing their admiralty board, and that Schenck was one of Davis's clique and had Speaker Colfax's sympathy.

110. Welles wrote (2 Diary, 237), Davis's renewed attempt to put the Navy in commission was decided against him. "He and his associates had intrigued skilfully and counted in vain on Democratic support" (Speeches and Addresses, 512).

111. When a bill concerning the destruction of the Alabama was discussed, on February 28, he moved that Cushing and his men have the value of the Albemarle given them, as sinking it "was an infinitely more brilliant service than the destruction of the Alabama." He objected to the pay department of the Navy bill, because it doubled officers and appointed paymasters, without abolishing navy agents.

112. McCarthy, page 295.

113. Vide 2 Welles Diary, 239, February 10, 1865. "Wade and Davis are leading spirits in the radical movement and are inimical to the Administration" (247), February 22. "Hale leads the radicals in the Senate, and Davis in the House. Davis has far greater ability than Garfield or Schenck, who gather around him. They assume to dictate to the Administration and dislike Seward."

114. On January 16, 1893, Gen. J. D. Cox wrote Rhodes (5 U. S. 51) that in February, 1865, he was in Washington, and, at Garfield's invitation, dined with Schenck and Davis. "The berating of Lincoln by the two last named was something to take one's breath away. Garfield laughed at it and at them, as if it were a kind of conversational pyrotechnics, but I was utterly dismayed." Nicolay and Hay (vol. 9, p. 452) in after years had not forgotten their bitterness, and spoke of the speech of February 21 as one in which Davis "rallied but feebly to the support of his discomfited colleagues. His short speech was noticeable only for its continued accusation of the President as a selfish usurper and for his ill-natured flings at his Republican colleagues of the House, who had changed their minds or refused to vote with him, as being influenced by the will of the President." With a much more "ill-natured fling" than any of which Davis ever used and one without good foundations, they continue: "With all his recognized logic and eloquence, Mr. Davis was one of those men who possessed the comforting faculty of seeing that everybody but himself was arbitrary, selfish and subservient," and they maintain that the House was unwilling to follow the committee or Davis," since neither could apparently frame a plan to suit itself (sic) for a single week," and since it was close to the end of the session.

115. Speeches and Addresses, 529.

116. Vide McCarthy, p. 311; Hosmer, Outcome of Civil War, 226.

117. On March 2.

118. On March 1, when a tariff bill was debated, he moved an amendment on the part of the Committee on Foreign Affairs (declared out of order by the Chair), which, he said, secured freedom of exports, but which really provided against arbitrary prevention of persons or goods leaving the country. On the same day he spoke concerning a claim of Stewart Gwynne, an employee of the Treasury Department, for printing presses to print money in a particular way.

119. *Speeches and Addresses*, 538.

120. *Three Decades*, 233.

121. Page 236.

122. *Speeches and Addresses*, 551.

123. George W. Julian, in his *political Recollections*, p. 246, wrote: "Davis was a man of genius. Among the famous men in the Thirty-eighth Congress he had no superior as a writer, debater and orator. He was a brilliant man, whose devotion to his country at this crisis was a passion, while his hostility to the President's policy was as sincere as it was intense."

## CHAPTER X.

## LAST DAYS (1865).

After Davis retired from Congress, he returned to the practice of law, but the fire burned within his breast and he became more radical.

On May 27, he wrote a friend<sup>1</sup> in Washington, making, in his letter, a formal declaration of his opinion in favor of negro suffrage as a necessity. Although his health had been impaired by his labors in Congress, his spirit was as keen as ever and his zeal as ardent for a successful reconstruction of the Southern States. He felt that the "future of the nation is summed up in the restoration of political power to the States lately in rebellion." He had no knowledge as to Johnson's policy; but felt that the condition of the problem "were plain." The President must take the initiative and Congress would be likely to recognize the State governments, which he should allow to be organized. No governments existed in "any State which rebelled; none can be organized, legally, without the assent of the United States, and no steps to secure that assent can be taken without his permission;" for he may refuse to allow any convention to be held. If he does so, "things will await the solution of Con-

gress.” “If he permit the aggregate white population of the South” to vote, he will “place the sceptre in the hands from which we have just wrested the sword.” He may attempt “to discriminate the loyal from the disloyal” and, then, a “mere handful of the population will remain, wholly incompetent to form, or maintain a State government,” constituting in fact “an odious oligarchy.”

Davis saw that the “whole mass of the population of the South has given aid and comfort to the rebellion. The Union men of the South preferred union and peace to disunion; they deplored the outbreak of the war, but they never hesitated a moment which side to take. If there was to be war, they were for their States and against the United States. There was no respectable number of Union men, willing to aid the United States in compelling submission to the Constitution, and there is none now. It is certainly to this class of the white population that we must look for aid, in restoring civil government in these States, but it is a great delusion to suppose them either bold or strong enough to meet and defy the united and energetic faction of revolutionists which drove them into rebellion.” If the Southern whites are “restored to political power,” they will be interested in repudiating the public debt, which was “created to sub-

jugate them to the laws," and in restoring slavery. To avoid the danger of the ex-Confederates returning to power in the nation, "the State governments in the South must be placed in hands interested to maintain the authority of the United States. This can be done, only by recognizing the negro population as an integral part of the people of the Southern States, and by refusing to permit any State government to be organized, on any other basis than universal suffrage and equality before the law." He doubted whether a "government can be recognized as republican in form, which excludes from suffrage and equal laws," half or more of the people and the negroes form that portion of the population of several States. He was sure that the white people, loyal or disloyal, of the "States which rebelled" would not "reorganize governments," on the basis of negro suffrage. He found no "State governments and no voters in any of the rebel States," but only "States and people of those States, both known to the Constitution of the United States." Negroes, Davis continued, "are as integral a part of the people of those States as the whites. Both are citizens; neither has a right to exclude the other; neither can speak in the name of the State for the other." The proper solution of the problem is to make an appeal to the people



of the State, black and white together. If Johnson is not willing to adopt this method, the problem will not be solved rightly and then it "threatens to generate a barren and bitter agitation, sure to result disastrously to those who propose the political enfranchisement of the negroes and to consolidate the union of the enemies of the government in the loyal States into an irresistible power." Congress ought to recognize no government, but such as is organized on the basis of universal suffrage. Davis felt that the "shame and folly of deserting the negroes" was "equaled by the wisdom of recognizing and protecting their power." They were more fit for the franchise than the secessionists and no more ignorant "than large masses of the white voters of the South, or the rabble which is tumbled on the wharves of New York and run straight to the polls." His conviction was that, "if organized and led by men having their confidence, the negroes will prove as powerful and loyal at the polls, as they have already, in the face of equal clamor and equal prejudice, proved themselves under such leaders on the field of battle."

As early as June 30, Welles wrote in his *Diary*<sup>2</sup> that Wade was mollified, but that Davis was "intending to improve the opportunity of delivering a Fourth of July oration,

to take ground distinctly antagonistic to the Administration on the question of negro suffrage." This oration at Chicago was Davis's last great appearance in public.<sup>3</sup> The audience was the largest gathered in the whole country on that day, and ten thousand people were estimated to have assembled to hear the orator in the great hall of the Sanitary Fair. The Mayor of the city presided, and Lyman Trumbull headed the list of vice-presidents.

After the reading of Lincoln's Emancipation Proclamation and his last Inaugural Address, and of the Declaration of Independence, Davis was introduced, and congratulated his hearers that that Declaration was now "true in right and true in fact, from one end of this broad land to the other." He reminded the audience that in 1860 the American Republic rested, "not dreaming of war, with no weapons to grasp, with no arms provided, with no army organized, with no generals to lead us save those at the plow, with no leaders but their enemies in power, while a deep and widespread conspiracy, organized for years, was preparing to strike what it fondly hoped was the final blow at the integrity of the American Republic." When the people realized this last fact they arose in arms for the salvation of their country. But in the early days of the war there was a hesitation to touch "one sign

of aristocratic domination which must not be interfered with—that was slavery.” Gradually, however, “the popular heart caught the real spirit of the rebellion,” and “the nation knew that it was struggling, not only to retain reluctant States, but to expunge from its institutions that which made the Declaration of Independence a lie and a vain thing.” Davis maintained that it was “from that day” that the “defenders of the cause, inspired by principle, have pursued energetically the contest in the face of the hostility of all the nations of the world, and loud predictions of failure here, till that glorious consummation has been attained which greets us here today.” The victory had been obtained at a great cost. “When contemplating these sad and yet ever glorious battle fields, everywhere seen, who does not deplore it with tears, that American blood has flowed *on both sides*, that it was our brethren who were led astray, ruined, scourged to destruction by the Nemesis of History, which drives men to work out for themselves the punishment of their own errors? Who does not remember that they are sons of the same forefathers who fought for that very Union which they attacked and we defended? Any man who does not remember this, lacks one-half of the American heart.”

He next summoned his auditors to look back,

"that we may be thankful for, and not proud of the things we have accomplished." Events had proved that "secession is not a peaceful remedy," that the South can be conquered, that the "bond of peace" can not be preserved by compromise, that the "negro is a man." He had proved his manhood at the point of the bayonet, "in the line of battle, alongside of armed white men, charging just as deeply into the heart of the enemy's ranks as his white brethren, vindicating his right to manhood by the exercise of the highest prerogative of man—fearlessness in the presence of eternity and of death which leads him there."

Another lesson learned was that "State rights are responsible to the bayonet," that States are immortal, but State governments that are organized by men and may be used for selfish purposes, perverted to the purposes of treason to defy the Union, are, by the laws of the United States, not immortal, but amenable to the laws, as men for their acts, and die by treason."

The results of the war were obtained, not by great leaders, though we "had, charged with the conduct of public affairs, faithful, diligent, devoted, and now martyred, servants of the Republic. But they did not initiate the movement which led to this great consummation; it sprang from the popular heart, which com-

pelled them to make war; the impulse came from the masses of the people, and they freely poured out their treasure and the blood needed to carry on the war. It was the people who anticipated it, their instinct dictated it, their treasure supported it, and they demanded every measure, and sustained, without a murmur, every disappointment, and supplied money to fill up every waste and every loss."

He compared the war to the "struggle of the French republic against those who sought its overthrow," for "all Europe was opposed to us; they hastened to vest our enemies with the rights of war, they threw open their ports for their privateers; they prepared in their machine shops the materials for breaking our blockade; they prepared the arms with which our enemies fought us; and for four years they fitted out ships of war and manned them with English sailors, to depredate on our commerce." We remember "The Warfare of Ormuzd and Ahriman," when we hear Davis say: "They thought our day of doom was come, and it is not impossible that their error proved our salvation. But we will remember that it was their error and not their merit, and will visit its consequences upon them." Thinking that "the great ægis of our protection ceased to recover the republics of America," Spain seized upon San Domingo and invaded

Peru, while France and England conspired against Mexico. Louis Napoleon, "with the purpose of limiting our expansion and strengthening his imperial throne by its counterpart in America" had set up Maximilian as emperor of Mexico. "We dissembled our indignation at this grave menace and insult with difficulty, but for the present, perhaps, not unwisely." Now, however, there is no longer need of silence, and we should declare that "the introduction of a European prince into an American republic, for the purpose of founding on its ruins a hereditary throne, is an insolent defiance of the declaration of President Monroe." France must withdraw her armies, which, while in Mexico, are a "perpetual menace to us." "We wish for no conquests, but we have established freedom here and we will have freedom here, and we will have freedom from here to Cape Horn." We desire to observe all the laws of neutrality, and we "are resolved that England shall accept and respect her own neutrality laws."

The cause of the war was slavery. "Government by law we secured by the Constitution; personal freedom we sacrificed to an existing interest, supposed to be temporary, admitted to be wrong, difficult of remedy, but to be remedied. But the expansion of our territory inspired that interest as it grew in strength:

first, with a desire for permanence, then with a desire for power." The addition of Florida and Louisiana caused the supporters of slavery to determine to rule. It first asserted itself as a power in the Missouri Compromise. "The Compromise of 1850 was the recognition of its equality with freedom in disposing of the fortunes and fate of the nation." In the repeal of the Missouri Compromise, the war in Kansas and the Dred Scott decision, it asserted its power to rule. To sum up the history of opinion on the matter, "slavery was first wrong, then excusable, then defensible, then defended by scriptural, historical and political arguments, then advocated and vaunted as the highest development of the social organization." "The Southern ethnology separated the negro from the human race; the Southern religion proclaimed the slave trade a missionary enterprise; the new Southern morals proclaimed the duty of holding the negro, for his own benefit, as the highest of moral obligations; the new Southern theory deduced the highest proofs of the wisdom of God from his placing the blackman in subjection to the white; the new Southern history made the chief purpose of the Constitution the protection of this interest; the new Southern political economy professed to have found in negro slavery that organization of labor for which the Old

World had so long striven in vain; the new Southern philosophy added to Jefferson's enumeration of the inalienable rights of man that of the negro to a master." The South feared, lest the "intrusion of new ideas might breed doubts," and so there was found "a territory equal in area to the greatest empire in the world, filled with an energetic, brilliant, brave and devoted people, educated in the idea that the State is supreme and could secede at will. \* \* \* That corner-stone, on which they sought to raise a new empire, now lies crumbled and shattered under the feet of advancing freedom."

The whole South had been involved in the rebellion. The so-called Union men there "were willing to vote that peace should continue, and with it the Union, but, if it were to be broken, then they would not fight against their brethren at home for the maintenance of the Union. They preferred peace at home and war with the United States, to war at home and peace with the United States." Even since the collapse of the Confederacy, the Southerners might be divided into "those who acquiesce readily and those who acquiesce only under coercion." Andrew Johnson had declared himself, and Davis openly opposed him. "To that people our rulers are now proposing to extend the privilege of gov-



erning themselves and us.” It was well to make haste slowly. Virginia’s Legislature had shown that there are “precautions absolutely necessary.” Davis favored the execution of Jefferson Davis, but felt that “the mere hanging of men has no power to prevent such a rebellion as this, where men have staked hundreds of thousands of lives on the issue and died, glorying in their cause. By hanging them, you would be only multiplying the number of martyrs, without materially diminishing that of criminals.” But they should be “stamped with the foul brand of treason, not allowed to glory over their struggle against the nation, to remain the heroes of the South, as they are at this day.” England and France preach moderation to us, but they do not show it to overthrown enemies. As “we are today a nation, in spite of their advice, their enmity and their efforts, silence would better become them.”

Davis believed that “the immense region” of the South could not be governed by military power, for such government is “inconsistent, not only with the principles of our institutions, but with the permanence and integrity of the American Government.” When we organize the civil governments in the subjugated States “we must recognize not only personal freedom, but the principles of self-government—

the right of the people to rule." Davis found no white population of the South "who will draw the sword for us and will maintain our rights, where they are threatened, and are powerful enough to maintain the authority of the State government at home." He found such men in the negroes, and he proposed to give them the franchise, because their rights, and even more, "our safety," were at stake. "It is a question of power, not of right, a question of salvation, not of morals. The alternatives are before us of a republican, friendly government, or a hostile oligarchy in the South." He held that "when negroes become free, they become a part of the nation, and to ostracise them is to sanction a principle fatal to American free government." To the objection that the negroes are not intelligent enough to vote, Davis replied that they know "a gray uniform from a blue one. They know a Yankee from their masters. They have fought well under Yankee leadership." He told the Chicagoans that: "I have seen about as much of negroes as any of you, have lived as near them, and I suppose have as much prejudice toward them as any of you; but to talk of this, after we have had to call them to our aid in putting down the rebellion, is either drivelling folly or infinite meanness." In Maryland emancipation was carried, "by going to the

poor white men in the Southern portion of the State and showing them that the negro could relieve them from military service. They did not stop to discuss his right to political privileges then. If he is their and your equal on the battle field, in the service of the country, he is and should be at the ballot box."

Davis refused to believe that Johnson was opposed to negro suffrage. "He may have desired to give" the Southern whites "a golden opportunity" of "silencing every doubt as to their loyalty." Like Davis, Johnson knew that the "only authority that can recognize State governments at the South is the Congress," and to that "august assembly" Davis turned and appealed to it, "not to take any man's declaration as to the safety of trusting the whole mass of the rebels of the South with the control of the Southern States," which policy might "clog and even arrest the wheels of government." He was "very little of a philanthropist," but he knew that the negro's vote was necessary for carrying on the Government, and that if the constitutions of the Southern States did "not give the mass of the negroes the right of voting on equal terms with the loyal white men," then "republican principles" required that no person from those States should be admitted to Congress. Congress should pass a constitutional amendment,

securing the suffrage to the negroes, and submit it to the States, for "we need the votes of all the colored people. It is numbers, not intelligence, that count at the ballot box; it is right intention and not philosophic judgment that casts the vote." If such an amendment be passed, "all the principles of the Declaration of Independence will be executed; this Government will rest on the right of individual liberty and the right of every man to bear a share in the government of the country, whose laws he obeys and whose bayonet, in the hour of danger, he bears."

Convinced in the rightfulness of granting suffrage to the negro, he wrote the *Nation* upon that subject, and his letter was printed on November 30.<sup>4</sup> In editorial comment, the letter is spoken of as presenting, "in a forcible shape, nearly all that can be said in favor of negro suffrage at the South. To the temper of portions of the letter, we might offer several objections, though none of them would affect the weight of the argument. But when he calls for negro suffrage, and in the same breath finds fault with the President for not withdrawing the troops from the South, we feel bound to say that his zeal outruns his discretion. The bestowal of the franchise, after the close of the war, without military protection, would, in our opinion, have been of about

as much use to the negroes as rations of *paté de foie gras*." This is scarcely a fair comment, since Davis's criticism of the President's military policy was largely made because he feared that the military occupation of the South would become permanent, and because, having so great power, the President had not used it for the permanent safeguarding of the Republic, by granting negroes the suffrage. Davis's letter was called forth by the result of the election in Connecticut, in which State a decisive majority had just refused to permit the negro to vote. Davis felt that this election revealed the fact that "there is an unreliable minority in our ranks, willing to unite with the enemies of the country," but that the importance of the election was lessened since, "in Connecticut," "no practical importance attaches to the negro vote and the old prejudice was free to assert its power." Davis was as strongly convinced as ever that, in the Southern States, the "negro population is a controlling power, on which the United States can rely there, in the event of a renewed rebellion. It is the only body of people who can give the white minority of loyal men a voice in the nation and prevent them from being overwhelmed and ostracised by the hostile majority. It is the only body from which a Republican vote can be expected in any of those

States; for the mass of whites, loyal as well as disloyal, hate and villify us, while the negroes know that liberty is *our* gift." Davis was alarmed because "the tone of the Southern press—now merely muttering between bayonets—is that of execration against the Republicans." With others who had voted for Johnson, Davis "stood confounded and divided" by his policy. The only choices other than negro suffrage were "an oligarchy of loyal whites, or an aristocracy of hostile whites. The one is loyal, but not republican; the other is neither loyal or republican." The former, President Lincoln organized in Virginia and Louisiana; the latter President Johnson is "organizing under his proclamation." There was danger that results of the war should be lost, and "in all the South the only mass of the population interested and able to prevent this danger is the negroes." Johnson's words had been inconsistent. "His policy is that of our enemies," and he had left the Southern negroes "to the will of the masters." He "has as much power to admit as to exclude voters," and, while his whole "conduct was a usurpation, it was no more usurpation to direct his agents to receive than to refuse negro votes." He had not followed the ante-bellum constitutions in all respects. "The suggestion that the constitutions survive the

governments is at once absurd and dangerous. The governments ceased to exist, because they disowned their subordination to the United States in point of law. Our arms expelled them as usurpations in point of fact. The constitutions were constitutions of those governments and of nothing else. When the rebellion usurped power in the States, the State governments ceased to exist, the constitutions became dead forms; the line of official transmission of powers was broken, there ceased to be any person designated to renew the functions of government, and they could never be renewed, till the people constituted anew the government, or Congress, in executing its guarantee, directed such governments to be *constituted*. For a government is certain *men* charged with certain *powers*. A constitution of government is the law creating the powers and designating the men to execute them; and, without the men, the government and the constitution are alike nonentities."

Davis's consistency was exact and his logic relentless, if you granted him his premises. He admitted that "nothing is more true than that the question of suffrage belongs to the States, but it is equally true that Congress is the exclusive judge of the compatibility of their solution of it with republican principles. The States have the right to prescribe who

shall vote, but they have no right so to exercise it as to create an oligarchy or an aristocracy, instead of a republican form of government; and it is the right and duty of Congress to judge this question; and its judgment is final and conclusive on all departments of the Government. This judgment it is the duty of the President to *execute*; over it, he has no power. It is the duty of guaranteeing republican government in the States which gives Congress this high jurisdiction; and the right of determining who are the Representatives and Senators carries with it the *exclusive* right of determining which is the constitutional—that is, the republican government of a State—for, otherwise, it might find itself compelled to admit Representatives and Senators of the States whose governments are not republican in form or substance, in its opinion.”

Davis’s reasoning was never more cogent, nor his reasoning more acute than in this paper. He maintained that “republican principles and national interests alike forbid the acceptance of the President’s plan.” “Republican government, in the American sense, is the government by the mass of the people through their representatives. Whenever, therefore, the mass of the citizens, or any great proportion of them, is excluded from political power, the government ceases to be republi-



can." In Connecticut the exclusion of negroes from voting "does not touch the republicanism of her government, for the persons excluded form no material or appreciable portion of her citizens," but in South Carolina the negro citizens form two-thirds of the whole body." "To deny them a vote" is not merely to establish an aristocracy of race, but also an oligarchy. "The Constitution makes no distinction of color. Its only distinction is that between free and slave inhabitants."

Free negroes are citizens, and, indeed, voted in North Carolina and in Maryland at the time of the adoption of the Federal Constitution. The President's "mushroom governments" ought to be rejected, for "his intermeddling is wholly illegal." "What has been done is a vain form." Military rule should not be prolonged; for, if continued long, "the idea of government by law will die out from the land." "Discarding, therefore, the horrible thought of military government," Congress can "paralyze the dangerous vote" by a constitutional amendment, apportioning representation according to the number of persons allowed to vote. This policy, however, would leave the "States in the hands of the disaffected," and should be rejected, as should that of placing them in the hands of the loyal white minority. A reorganization of these States on

the "basis of universal suffrage," secured "against the mutations of political life" by the adoption of a constitutional amendment, is necessary to support the prohibition of slavery. "They who propose to postpone negro suffrage till the negro is educated, need political education more than the negro." Davis would neither deprive Southern leaders of citizenship, nor confiscate their lands, but would "balance the power of the disaffected aristocracy by the resident mass of loyal negroes, armed with the ballot and bayonet." Johnson was "experimenting *now* on nothing but the patience of the Republicans and the support of the Democrats." If he should obtain a majority in Congress, "a counter revolution is effected, which postpones the fruits of war for a generation."

The Republicans then possessed two-thirds of both houses of Congress, so that they could do what they thought right. "If the President deserts those who elected him for the votes and policy of their opponents, we must break the coalition at any cost." Davis felt that it was insane to dream that the South would of "itself ever give either suffrage or equality before the law, and now is our only time to compel it."

His religious feeling caused him thus solemnly to close his last public utterance: "If

men say God works slowly, yet will not let a good cause fail, they had better enlighten their piety by a glance at his ways in history, and reflect that he visits wasted opportunities, not less than wickedness, with ruin. I trust we may not be monuments of that wrath."

During the second week of the first session of the Thirty-ninth Congress Davis visited Washington, and when he entered the hall of the House of Representatives he received a "general, spontaneous and cordial" greeting from gentlemen on both sides of the House, so that he was sensibly touched. "The crowd that gathered about him was so great that the party was obliged to retire to one of the larger ante-rooms, for fear of interrupting the public business." <sup>5</sup>

Society in Baltimore had been divided into two hostile camps by the war. The Union people held assemblies, which Mr. and Mrs. Davis attended. The Union men formed the Union Club, which stood on Charles street, where the Masonic Temple now stands, about two blocks from Davis's residence. In a little room there Davis was wont to meet Joseph M. Cushing, George C. Maund, Archibald Stirling, Jr., Hugh Lennox Bond, James T. Partridge and John T. Graham, and discuss Maryland politics with them. All of the party smoked, except Davis and Graham, who

frequently left the room before the rest to avoid the smoke-laden atmosphere. Graham often called for Davis, when such a conference was arranged, and did so on a cold day in the Christmas season of 1865. Davis came out of his house, as was frequently the case, without an overcoat. Graham remonstrated with him on his recklessness, but Davis made light of the matter. Just before reaching the Club, however, he shivered and said to Graham: "It is cold." He stayed a while at the conference and returned to his house for the last time.

The cold which he caught developed into pneumonia and, after a very short illness, on December 31 he died at his home on the west side of St. Paul street, above Saratoga street. Until the morning of the day preceding his death, his recovery was expected, but then unfavorable symptoms appeared, and when his wife spoke to him on that evening of a brief visit they had planned to Mrs. S. F. Du Pont, he replied, in the last words he ever uttered: "It shows the folly of making plans even for a day."<sup>7</sup> He continued to fail rapidly in strength and passed away about two o'clock on the next afternoon, so "quietly that no one knew the moment of his departure." To this day the surpassing beauty<sup>8</sup> of his face, with its lofty brow, finely chiseled nose and sweeping

moustache, lingers in the memory of those who saw his body as it lay awaiting burial.

He was cut off in the prime of life, before men knew he was ill, and the city was awed by the suddenness of his end. Even the *Sun* paper, which had fought him bitterly while alive, now he was dead, could do naught but praise him, diminishing that praise, in truth, as much as it could, calling him a "politician of considerable ability and aspirations," a man of "fine forensic talents," one who "rather prided himself on being a progressive in politics and seemed disposed to startle at times by his enunciations. His extreme radicalism in the end doubtless worked to his disadvantage among his political associates."

At eleven o'clock on New Year's Day the rooms of the Union Club were filled with Davis's friends, manifesting the depths of their feelings. Governor Thomas Swann was made president of the meeting,<sup>9</sup> and said that, associated with Davis "for many years in the public affairs of the State of Maryland, no one, perhaps, had a better opportunity than myself of judging of his commanding talents, indomitable energy and industry, and his many private virtues. An able debater, the ablest, perhaps, in the country; a brilliant orator, firm and decided in all his impulses, spotless in the relations of private life, few of our public men

in the country have built up a greater reputation for cultivated genius, or attached to him more devoted friends among those with whom he co-operated in his political career. For some years past it has been my misfortune to differ with him upon questions of national and State politics, under circumstances which might have been supposed to have led to alienation and unkind feeling. This I am happy to have it in my power to correct. But the past is forgotten in the severity and suddenness of the blow which has brought us here today. There are occasions when the petty differences of this life should be forgotten. It is in the sad occurrence of events like the present that the worthlessness of all worldly pursuits is so keenly brought to our view."

All that day and until late in the evening the body lay in state at his residence, and the newspapers recorded that "many colored people were among those who viewed the remains" of him who had fought for them so valiantly. The funeral services took place in St. Paul's Protestant Episcopal Church in the afternoon of the next day, and were conducted by Rev. Dr. Hobart, the rector of Grace Church. Afterwards Davis's body was interred in the family vault of his father-in-law in St. Paul's graveyard. The Mayor and City Council attended the funeral services in a

body, as did Chief Justice Chase, Mr. Justice Davis, his cousin, Mr. Justice Swayne, Gen. H. W. Halleck, Secretary Edwin M. Stanton, Charles Sumner, Governor Swann, and Lieutenant-Governor C. C. Cox. The courts adjourned for the day and a meeting of the members of the bar was held in the Superior Court room.<sup>10</sup> The presiding officer, Judge R. N. Martin, spoke of Davis as an "accomplished, skillful and able lawyer, with intellectual power as an advocate and debater that gave him a conspicuous place among the most brilliant of our forensic and party orators," and "as possessing all those qualifications which belong to a cultivated and irreproachable gentleman." Resolutions were adopted,<sup>11</sup> in moving which William Schley spoke of Davis as "deeply grounded in the elements of law" and as having "great ability in conducting causes." "If he had given his powerful mind, in a large degree," to law, he would have been among the "foremost lawyers; but nature designed him for a statesman." In private life he was "a refined and courteous gentleman of rare acquirements and highly cultivated taste, genial and social in disposition. He was not a man to abandon his convictions," but was "stern and uncompromising and fearless in the discharge of what he considered his duties."

J. Morrison Harris, who had served in Congress with Davis for six years, seconded the resolutions concerning that "great man," in whom "regular habits and physical vigor would have led men to look for long life." His colleague thus bore testimony to Davis: "So unquestionable was his ability, so large his information, so striking his views, so evident his earnest and clear convictions, and so irresistible the power of his eloquence that, however men differed with or censured him, he never rose to address the House that its members did not throng around him and, friend and foe alike, accord to him frank and liberal praise. In all his relations to the House he occupied high position, and both in the committee room and on the floor he made himself felt." His enemies could accuse him of nothing worse than erroneous opinions. "His more important speeches were the products of a full mind, and its stores of acquisition were fused with a freshness of handling that was always novel and applied with an earnest vigor that commanded willing audience, even when it failed to enforce conviction. His arguments were close, compact and true, reasoning strictly. He never stopped short of logical sequences, bold and self-poised. He did not pause to estimate probable censure, or hold back from fear of consequences. He appeared



to have an intuitive and unfaltering faith in his own convictions, and he wrought courageously for their realization. His fluency was wonderful, and his style of speaking carried his hearers with him by the very rush and impetus of the vigorous earnestness that marked it. He was undoubtedly an orator of rare ability, and those skillful to judge assigned him a foremost rank among the eloquent speakers of the country."

"Early winning distinction, his cogent mode of arguing his causes and the breadth and comprehensiveness of his arguments have won him unstinted praise in all the courts in which he practiced." In the Supreme Court "he had gained the position of a counsellor of commanding abilities." He possessed the "firm faith of a Christian man." "Proud and self-contained in the matters that pressed upon him sharply in the rough conflicts of public life, I know," said Mr. Harris, "that he was genial, vivacious and singularly agreeable in his private intercourse." His "extensive reading, large observation, literary taste, and wonderful memory made him a most attractive and pleasant companion, and, while his earnest nature attached his friends most strongly to him, they felt that differences of opinion did not beget in him any personal littlenesses, and that

he was to be fully and frankly relied upon in all the professions of his friendships."

The eloquent R. Stockett Matthews followed and bore witness to the fact that Davis's "whole heart was aglow with a love of liberty." The law had just "lost one of its ablest and most ingenious interpreters, in whom the rarest gifts of nature were united to ripe scholarship and copious and accurate legal learning. He brought to the discharge of the trusts committed to his management a profound appreciation of the responsibilities of an advocate. In small, as in great cases, he was painstaking and exact, never trusting to the chances of the trial table interests which could be best promoted by faithful study and preparation. No question was so complicated as to baffle his powers of subtle analysis, and the most abstruse principles were simplified by the force of his clear logic. He was a rapid, keen and exhaustive thinker, not less eminent for the quickness of his perceptions than for the copious logic with which he illustrated every subject upon which his mind was brought to bear. Although it was easy at all times to recognize in his diction and in his varied style the cultivation of a scholar of widely diversified acquirements, yet his arguments in the courts were *sui generis*—exhibitions of processes of pure reasoning." They were "terse, vig-

orous, compact and lucid, and their unity was seldom marred by the interpolation of decided cases." For some years before his death he had seldom appeared in the courts. A "most self-reliant and self-poised man," when Davis was "once satisfied that a certain course was to be pursued, he walked through it to the end and never asked himself how many or how few would follow him. Dreading alone the condemnation of his own conscience, he neither omitted to do what it dictated, nor dreaded the disapprobation of others. He felt that right and truth and justice ought to be popular, and he was their champion at all times against all odds, and fearless of all consequences. He could dare to do what most men would shrink from; he could dare to leave undone a thousand things which men equally honest, but with coarser natures, are in the habit of thinking necessary to the success of a public man."

Archibald Stirling, Jr., showing signs of his great grief in his speech,<sup>12</sup> added that Davis, "while he was in many respects a proud man and a man of quick temper," was "destitute of every species of personal meanness and of every species of personal resentment. He united the utmost rapidity of thought, the utmost facility of acquiring information, with a habit of most patient investigation." A "cultivated Christian gentleman," he was reserved

in religious matters, but had a "firm and strong faith."

Outside of Baltimore, came other testimonies to his power. Greeley wrote that the House of Representatives had listened to him as it listens to few, and that he had "keen invective, salient intellect, with power of continuous thought." By nature self-reliant, he seldom permitted the opinions of others, even of his own friends, to influence his own resolutions. Hence he grew to be thought as a politician self-willed, and, by those who make expediency their established doctrine, to be denounced as impracticable. Little cared he. His "fidelity to ideas was one of his most admirable traits."

Charles Sumner wrote a lofty eulogy upon Davis,<sup>13</sup> for he felt that Davis's death "at this moment is a national calamity. His rare powers were in their perfect prime and he had dedicated all to his country. At this crisis, when the best statesmanship, inspired by the best courage, is much needed, it is hard to part with him. Nature had done much for this remarkable man. Elegant in person, elastic in step and winning in manner, he arrested the attention of all who saw him, and when he spoke, the first impressions were confirmed. He was rapid and direct. He went straight to the point. He abounded in

ideas. Language lent her charms. Among the living orators of the country he had few peers. Professional studies and political experience added to his powers. Had he lived I know not what height he might have reached. Never before had he been so completely master of himself, and never before did he see so clear and glorious a line of duty. As the occasion was vast, so I doubt not would have been his efforts. He looked to nothing else than the complete enfranchisement of his country and the redemption of all the promises of our fathers in the Declaration of Independence." In his recent letter to the *Nation*, he had "touched this question to the quick," and was right in his contention. "Alas! that he is not here to help in the battle now at hand! With what force and beauty, with what intensity and eloquence he would have illustrated the congenial theme." Sumner compared him with Charles James Fox. Davis was a "zealous man and, like all zealous men, when great questions are in issue, sometimes gave offence. It is hard to strike strong blows without leaving bruises. It is hard to restrain the rage of a generous indignation so that it will not seem severe. There are times when Justice is severity. There were things he could not bear. His warm nature glowed at the thought of wrong or usurpation; nor could he check the

currents of his soul, even if they threatened to dash against persons powerful in place or influence. A President like Lincoln was not above his honest, fearless criticism."

To Davis's loyalty to the Union, Sumner gave ample praise: "His country owes much to him. Living in a State which panted with the throes of rebellion and surrounded by a disloyal population, he was, from the beginning, austere in patriotism. He made no compromises. He stood by the flag at all hazards, as the combat deepened; he was among the foremost to see that slavery was the great rebel. Against slavery he struck. He had the inexpressible satisfaction to witness the first stages of its overthrow, and he was girding himself for the final battle with the transcendent offender under the new form it assumed. In striking against slavery, he set an example to his fellow-citizens everywhere. If he, whose home was in a slave State and whose friends were slave-masters, could strike such blows, it was hard to see how citizens of other places, where slavery did not prevail, could hesitate."

Maryland "will cherish his memory with especial reverence. Among all the sons she has given to the country there is none who can be named before him. Hereafter, when Maryland is fully redeemed and a happy people rejoices in all the manifold blessings secured,

then will hearts throb and eyes glisten at the mention of this noble name. Better for his memory than any triumph of genius at the bar will be his devoted championship of human freedom. Maryland may not now be ready to do fit honor to her departed son, but the time cannot be long postponed. Her advance in civilization may well be measured by sympathy with his name." The eulogy closed by quoting "these artless, feeling words," from a "journal published by colored persons in Baltimore." "He was true to his country and a *true friend* to the colored people, never faltering in the time of need. In Congress he fought as a hero for our people, and at home he labored assiduously for the bondman and espoused the cause of *liberty, justice and truth* up to the time of his death." His memory "should live in every colored American's heart for ages to come. At his own peril, he "stood invincible for his country, knew no flag but the flag of *free* America, even when his nearest friend would impeach him for his acts and almost threaten his life." <sup>14</sup>

An estimate less complimentary was made by Gideon Welles, who wrote in his diary, in his usual bitter manner, on January 1, 1866, that Davis: "a conspicuous member of the last Congress and a Maryland politician of notoriety, died on Saturday. He was eloquent, pos-

sessed genius, had acquirements, was eccentric, ambitious, unreliable, and greatly given to intrigue. In politics he was a centralist, regardless of constitutional limitations. I do not consider his death a great public loss. He was restless and active, but not useful. Still, there will be a class of extreme radicals who will deplore his death as a calamity and eulogize his memory.”<sup>15</sup>

From Washington, on January 3, 1866, Chief Justice Chase wrote thus to Mrs. Davis:

“I would not intrude yesterday on your sacred grief, even by word of sympathy, but cannot forbear expressing in a few lines my profound sense of the great loss sustained by Maryland and the whole country through the terrible bereavement which has been permitted to fall on you.

“I always wanted to know a great deal more of Mr. Davis, personally, than I did; but I knew enough to make my admiration of his remarkable qualities of mind and heart equal to that felt by those whose relations were more intimate. His brilliant eloquence, his rare attainments, his noble manners and, above all, his clear perception of the right and the fearless courage with which he devoted himself to its vindication and establishment, drew to him irresistibly something besides and far better



than the applause of men, their profound respect and their affectionate devotion.

“His greatest work is his noblest monument. To him especially belongs the great honor of breaking the bonds of every slave in his native State. The Free Commonwealth of Maryland, better than any star-pointing pyramid, will commemorate his genius and his labors.

“You cannot think much of these things now, and yet his public acts and the greatest public act of his life must be to you hereafter a grateful retrospect. At this moment the anguish of separation, the great loss to yourself and to your dear children, the void in your home, must engross all your thoughts and feelings. If you think of other things at all, you are inconsolable under the thought which oppresses me and multitudes, how can he be spared when there is so much to be done which no other man can do so bravely and so well? God’s grace and the gentle healings of time can only bring relief. May God’s grace be with you, dear Madam, and may you at last see even in this sorest of afflictions the manifestation of a Father’s love.

“With deep sympathy and sincere respect,

“Your friend,

“S. P. CHASE.”

Congress did Davis an unexampled and as yet unparalleled honor. On Washington’s

Birthday both Houses adjourned to hear a memorial oration<sup>16</sup> delivered by John A. Creswell, a Senator from Maryland, on Davis, though he died a private citizen.<sup>17</sup> Reverdy Johnson, the State's other Senator, sat on Creswell's right, and the galleries were filled with attentive listeners.<sup>18</sup>

In introducing Creswell, the Speaker, Schuyler Colfax, referred to Davis as one who was "inflexibly hostile to oppression, whether of slaves on American soil, or of republicans struggling in Mexico against monarchical invasion, faithful always to principle and liberty, championing always the cause of the downtrodden, fearless as he was eloquent in his avowals. He was mourned throughout a continent; and from the Patapsco to the Gulf the blessings of those who had been ready to perish followed him to his tomb."<sup>19</sup> Creswell began by referring in terms of high praise to Washington and Lincoln, and then sketched Davis's career. In his estimate of his friend he first dwelt upon his oratory, remarking that "he always held his hearers in rapt attention until he closed, and then they lingered about, to discuss with one another what they had heard. I have seen a promiscuous assembly, made up of friends and opponents, remain exposed to a beating rain for two hours, rather than forego hearing him. His stump efforts

never fell below his high standard. He never condescended to a mere attempt to amuse. He always spoke to instruct, to convince, and to persuade through the higher and better avenues to favor.”<sup>20</sup> He never wrote out his speeches, yet “his style was perspicuous, energetic, concise and, withal, highly elegant. He never loaded his sentences with meretricious finery or high-sounding supernumerary words. Of humor, he had none; but his wit and sarcasm at times would glitter like the brandished scimitar of Saladin, and, descending, would cut as keenly. The pathetic he never attempted; but, when angered by a malicious assault, his invective was consuming and his epithets would wound like pellets of lead.”

Turning to consider the character of the man, Creswell found his “most striking characteristics” to be “his devotion to principle and his indomitable courage. There never was a moment when he could be truthfully charged with trimming or insincerity.” His views were always clearly avowed and fearlessly maintained.<sup>21</sup> “Some have said he was hard and dictatorial. They had seen him only when a high resolve fired his breast and when the gleam of battle had lighted his countenance. His friends saw deeper and knew that beneath the exterior he assumed in his struggles with the world there beat a heart as

pure and unsullied, as confiding and as gentle as ever sanctified the domestic circle or made loved ones happy.”<sup>22</sup>

Several of those who knew Davis, in the years following his death paid noteworthy tributes to him. John W. Forney<sup>23</sup> wrote that Davis “passed away in the flush and prime of his usefulness: the Rupert of debate, the Risenzi of the people, the model of manly beauty—yet he faded out at the moment when he was filling the hearts and eyes of men.”

James G. Blaine had long admired Davis, and when Theodore Tilton, in the *Independent*, said that Davis’s mantle had fallen on Roscoe Conkling, Blaine made use of this comparison in his attack upon Conkling on the floor of Congress, on April 30, 1866:<sup>24</sup> “The resemblance is great. It is striking. Hyperion to a satyr. Thersites to Hercules, mud to marble, a dunghill to a diamond, a singed cat to a Bengal tiger, a whining puppy to a roaring lion. Shade of the mighty Davis! forgive the almost profanation of that jocose satire.” Conkling, quite naturally, never forgave Blaine, whose admiration for Davis was further expressed three years later,<sup>25</sup> witnessing to “the infinitely varying and always freshly developing grandeur of Davis’s character. I was only yesterday glancing over his

speeches and I came across this, which I well remember when it fell from his lips."

"For untimely agitators and premature reformers, I have little sympathy. They are cocks that crow at midnight, heralding no dawn and only disturbing peaceful and needed rest by unseemly and unseasonable clamor."

"I do not quote this," Blaine continued, "as any striking exhibition of eloquence, or excellence of speech, but only of the wonderful readiness and facility of expression and illustration which came to his lips as with inspired force. I remember the startling significance of this particular phrase, as it fell on my ear. It arrested the attention of the entire House."

"Davis was essentially a many-sided man. His culture seemed to embrace the whole domain of knowledge. He was a profoundly learned lawyer. He was a most clear-headed and admirable statesman. He was a man of letters. He was a matchless orator. He was a true and genial Christian, and yet a man of the world."

Fifteen years afterwards, while writing his *Twenty Years in Congress*, Blaine had lost none of his long-felt admiration for Davis, and wrote of him:<sup>26</sup> "As a debater in the House, Mr. Davis may be cited as an exemplar. He had no boastful reliance upon intuition or inspiration, or the spur of the

moment, though no man excelled him in extempore speech. He made elaborate preparation by the study of all public questions, and spoke from a full mind, with complete command of premise and conclusion. In all that pertained to the graces of oratory, he was unrivalled. He died at 48. Had he been blessed with length of days, the friends who best knew his ability and his ambition believed that he would have left the most brilliant name in the parliamentary annals of America." In another part of the work Blaine spoke of Davis's highly cultivated "mind" and of his "style of writing, which, in political controversy, has rarely been surpassed, a style at once severe, effective and popular." <sup>27</sup>

John Sherman wrote his Recollections thirty years after Davis's death, and thus spoke of him <sup>28</sup> as "the most accomplished orator in the House while he was a member. Well educated in college, well trained as a lawyer, an accomplished writer and eloquent speaker, yet he was a poor parliamentarian, a careless member of committee, and utterly unfit to conduct an appropriation or tariff bill in the House. He was impatient of details, querulous when questioned or interrupted, but in social life and in intercourse with his fellow-members, he was genial, kind and courteous. On one occasion, when I was called home, I

requested him to take charge of an appropriation bill and secure its passage. He did as I requested, but he was soon embarrassed by questions he could not answer, and had the bill postponed until my return. I felt for Mr. Davis a personal attachment, and I believe this kindly feeling was reciprocated."

One of Davis's political antagonists in Congress, S. S. Cox,<sup>20</sup> wrote, years after Davis's death, that he "was the most gifted in eloquence and logic of any member of Congress within the author's acquaintance." Cox recalled "a certain boyishness in his manner and figure," which "wore off the moment he began to speak." In Cox's estimation, Davis was "the best orator in every sense of the word, whom he has ever heard in Congress. He had logic, but it was logic set on fire with rhetoric. As the war was winding up and liberty became almost as indispensable to our country and its institutions as the Federal Union itself, it was Henry Winter Davis who rose to the front rank of debate and by his silvery style and cogent logic held Congress almost enthralled until something was accorded to the dignity of personal and public liberty which had been invaded by the excesses of the war." Cox continued to speak of Davis's "austerely energetic, yet elegant style. It is said that he had no humor, but humor is nearly allied to

wit and sarcasm. It is confessed that he had much of the latter, but it was frequently blended, as the writer has seen, with good temper. In some of his speeches, especially those in the midst of the war, he made others sympathetic with his own heroic resolve." When he failed to produce the desired effect, the failure was, "perhaps, due to a lack of moderation in temper and to an enthusiasm which had been generated in contending so closely in a border State with those who opposed him."

An unfriendly critic is forced to bear testimony to Davis's "zeal for civil liberty," which "will constitute his best claim to the gratitude of posterity," and to his possession of "literary gifts scarcely surpassed by any statesman then in public life."<sup>30</sup>

Julian<sup>31</sup> characterizes Davis as "the most formidable debater in the House. He was full of resources, while the rapidity of his utterance and the impetuosity of his speech bore down everything before it. The fire and force of his personality seemed to make him irresistible, and can only be likened to the power displayed by Mr. Blaine in the House in his later and palmier years."

These are the estimates of others, and, at the end, it falls to every biographer to sum up the character of the man whose life he has written, whom he has learned to know well, whom



he has tried to understand. As a boy, I was taught that Henry Winter Davis was a great man and an eloquent orator, and, as I have studied his life, my appreciation has grown of the fine gifts with which he was endowed and with his noble use of them. The impression has been made on some men that his was a complex nature, but it does not seem so to me. There is a remarkable sincerity and simplicity throughout his whole career. He was a fine scholar, a man of pure private life, of a strong religious faith, of a dauntless courage, of a lofty eloquence, of a changeless love for his country. He was a leader of men who gave and took blows in conflict, and, though he might be bitter in speech towards an antagonist, he never permitted personal ends to interfere with public duty. Alexander Hamilton in 1800 and Daniel Webster in 1848 and 1852, when displeasing Presidential nominations had been made by their party, compare unfavorably as to their conduct with Davis in the Autumn of 1864, when he made his fine address in Philadelphia in behalf of Lincoln's election. Davis has been called an aristocrat, but in his heart the love of mankind burned with an inextinguishable blaze. His devotion to American principles never faltered, and he was keenly vigilant to guard against any danger which might threaten the Republic. In

his younger years that danger seemed to him imminent from Russia, and he boldly warned his fellow-countrymen against it. That love for his country, for the principles of the Declaration of Independence, and for the provisions of the Constitution led him to strive to obtain freedom and civil rights for the negro slave and to resist any setting aside of the frame of national government, no matter how great the need for this might seem.

Sir George Otto Trevelyan has recently written:<sup>32</sup> "The American people, during every great crisis in their history, have shown themselves willing to be strongly, and even autocratically, handled by rulers whom they themselves have voluntarily placed in power."

However true this might be of Americans in general, it was far from true of Davis, who ever guarded with extreme jealousy the observance of constitutional provisions. He was anxious that the Executive should not encroach one inch upon the sphere of the Legislature, and denounced such encroachment whenever he found it.

Detraction has found little to say against Davis, except that he made bitter attacks upon the political conduct of his adversaries, and that he was a leader of men whose conduct at elections was rough and turbulent. As to the former charge, who was not bitter in those

strenuous times but Lincoln and Reverdy Johnson? Davis's bitterness, like that of the Psalmist of old, came from the fact that he believed his adversaries to be the opponents of a righteous cause. As to the latter charge, his friends admitted that Davis was sometimes mistaken in his lieutenants and reposed too much confidence in unworthy men. There is little doubt also that in those old, bad political times in Baltimore the temptation to fight the devil with fire was great, and that a man who was scrupulously upright in his own conduct might shut his eyes and permit henchmen to perform lawless deeds with less blame than would be given in later, better days.

When one admits all that the *advocatus diaboli* can adduce, there are found no more than a few spots on the sun, and the glorious lustre of Davis's brilliant character is only slightly dimmed. He loved America so well that he would not willingly suffer those to come to its shores and share in the rule of the land who seemed to him to be unworthy to be called Americans. He loved his State so well that he was not willing that a single man within its borders should remain a slave. He loved the United States so well that he put forth his whole effort that the land should remain united and the spirit of secession and division should be put to flight forever. For this faith-

ful service and this whole-souled devotion to his country, this fiery soul deserved well of it. Maryland has borne many famous sons, but none loved her more unselfishly, more completely than he. For this love and for his great service to the Union, men may well preserve the memory of the name of Henry Winter Davis.

#### NOTES ON CHAPTER X.

1. Speeches and Addresses, 556. Capt. H. P. Goddard, in the *Baltimore Sunday Herald* of March 8, 1903, quoting Rev. C. Herbert Richardson, says that Davis remarked about this time that the military commission appointed to try the assassins of Lincoln, was without legal warrant, and that President Johnson might as well have called out the marines and shot down the prisoners.

2. Vol. 2, p. 235.

3. Speeches and Addresses, 565.

4. Speeches and Addresses, 585. On July 26 (Rhodes, vol. 5, p. 534) a letter was written by Davis to Sumner (vide Sumner's Manuscripts in the Harvard University Library), asking whether Massachusetts would tolerate Dawes, who sustained the President and whose speech Davis found "very discouraging."

5. Creswell, Speeches and Addresses, XXI.

6. Appleton's Annual Cyclopedia for 1865 states that he died of typhoid-pneumonia, resulting from a cold bath, taken while suffering with a heavy cold.

7. Creswell, Speeches and Addresses, XXI.

8. Creswell, Speeches and Addresses, XIV, speaks of "his lifeless body, as beautiful as the dead Absalom."

9. Joseph M. Cushing acted as Secretary. Resolutions of regret were adopted, which were proposed by a committee, of which Hon. William J. Albert was chairman.

10. In the United States Court memorial addresses were also made by Judge W. F. Giles and W. J. Jones, and, in the Criminal Court, by Judge H. L. Bond and George C. Maund.

11. Reverdy Johnson, Jr., acted as secretary of the meeting.
12. C. J. M. Gwinn also spoke.
13. In *New York Independent* of January 11, 1866, reprinted in Works, X, 104-108.
14. Sumner's biographer, Pierce (vol. IV, p. 293), refers to this warm tribute by Sumner to Davis.
15. 2 Diary, 409. On the other hand, Riddle's Wade speaks of him (p. 259) as "one of the ablest and most brilliant men of his time."
16. See Speeches and Addresses, 9.
17. Andrew Johnson and half of the Senators were absent.
18. The atrabilious Welles wrote in his Diary for the Day, vol. 2, p. 438, injuring his own memory more than Davis's by stating that he felt that the celebration had an ulterior purpose. Davis was a "private citizen who died in Baltimore, two or three months since, but who had been a conspicuous actor among the radicals. He possessed genius, a graceful elocution, and erratic ability of a certain kind; but was an uneasy spirit, an unsafe and undesirable man, without useful talents for his country or mankind. Having figured as a leader, with Thaddeus Stevens, Wade and others in their intrigues, extraordinary honors are now paid him. A programme, copied almost literally from that of the twelfth in memory of Mr. Lincoln, is sent out. Orders to commemorate this distinguished Plug Ugly and Dead Rabbit are issued, and the whole is a burlesque which partakes of the ridiculous more than the solemn, intended to belittle the memory of Lincoln and his policy, as much as to exalt Davis, who opposed it. I would not go. The radicals wished Davis to be considered the equal or superior of Lincoln." The small-minded man could neither forget that Davis had opposed him, nor could he refuse a grudging eulogy.
19. Speeches and Addresses, XII.
20. Speeches and Addresses, XXIX.
21. Speeches and Addresses, XXXI.
22. Speeches and Addresses, XXXIII. Appleton's Annual Cyclopedia for 1865 (p. 305) thus spoke of Davis: "His intellect was admirably suited to his profession—keen, inventive, salient, and with that power of continuous thought which is essential to every man that has to do with affairs of the forum or of the State. As a politician, his unflinching integrity often assumed the appearance of audacity, and, by nature self-reliant, he sel-

dom permitted the opinions of friends to influence his own resolutions; hence, by those who made expediency their cardinal doctrine, he was sometimes denounced as self-willed and impracticable. His Southern birth and education, his political hopes, which were always high, and his professional interests, to which he was much attached, weighed as nothing against his faith in the principles of the Declaration, of humanity, of freedom, and of equal rights."

23. I, *Anecdotes of Public Men*, 302.

24. Vide *Moore's American Congress*, 460.

25. *Gail Hamilton's Blaine*, 239.

26. Vol. 1, p. 499.

27. Vol. 2, p. 43.

28. Vol. 1, p. 194.

29. *Three Decades of Federal Legislation*, p. 92.

30. *McCarthy*, p. 283.

31. *George W. Julian's Political Recollections*, p. 360.

32. *G. O. Trevelyan, George III, and C. J. Fox*, vol. 2, p. 301.

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